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No. 1792.

United States Legation

Tokei, Japan, Jan. 7th 1884.

Mr. Bingham

To the Secretary of State

Subject

Daily Weather reports of the Imperial Meterological Observatory, Tokei, for December 1883.

No. 1492 United States Legation

Tokei, Japan, Jany 7th 1884.

Hon. Frederick T. Frelinghuysen:

Secretary of State

Washington D.C.

Sir:

Herewith I have the honor to transmit for the information of our Signal Service, the daily weather reports for the month of December, 1883, of the Imperial Meteorological Observatory at Tokei, Japan.

I have the honor to be,

Sir,

Your obedient servant

M. A. Bingham

Enclosure

Weather reports for Dec. 1883.

DEPARTMENT OF STATE
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No. 1793.

U. S. Legation, Japan.

Tokei, Jany 11th 1884.

Mr. Bingham.

To the Secretary of State.

Subject.

The Public Loan Bonds Regulations for the construction of the Nakasendo Railway and the Regulations for the issue of Loan Bonds in exchange for Kinsatsu.

No. 1793. U. S. Legation

Tokei, Japan, Jany 11th 1884.

Hon. Frederick T. Frelinghuysen,

Secretary of State.

Washington, D. C.

Sir:

Herewith I have the honor to enclose translation copies of two Imperial decrees or notifications numbered respectively 47 & 46. of date the 28th ultimo and published officially in the Japan Daily Mail of the 31st ultimo.

Each of these several decrees provides for a loan. Decree No. 47 provides for the issuance of Public Loan Bonds "for the purpose of raising a fund to construct a railway on the Nakasendo road from Takasaki

Fifty

(fifty miles north of this city) to Ogaki, Mino.

The Bonds issued under this decree (47) will not bear the name of the owner and will bear interest at the rate of 7% per annum payable in paper currency and are not in the aggregate to exceed 20.000.000 yen.

By Art. 11. of decree No. 47. any person is permitted to buy and sell these bonds. They are not redeemable for five years, but are redeemable within thirty years.

Notification No. 48 provides for the issuance at par of six per cent Loan Bonds not to bear the name of the holder and to be issued "with the object of resuming specie payments." These Bonds will be exchanged for the paper money issued by this Government and

and the principal and interest thereof will be payable in specie &c.

It is to be noted that these Bonds last named are redeemable after five years and within thirty years thereafter and that the regulations for both loans save as to the rate of interest and the period of redemption are subject to amendment or additions at the pleasure of His Majesty's Government.

I have the honor to be, Sir,

Your obedient servant,

Mc A Hughes

Enclosures.

Translation copies of Imperial Notifications Nos. 47 & 48.

Extract from the Japan Daily Mail.

NOTIFICATIONS OF THE COUNCIL OF STATE.

Notification No. 47.

It is hereby notified that the Public Loan Bonds Regulations for the construction of the Nakasendo Railway, has been fixed as follows :—

Art. 1.—These Public Loan Bonds are to be issued for the purpose of raising a fund to construct a railway on the Nakasendo Road from Takasaki, Kotsuke, in the prefecture of Gumba, to Ogaki, Mino, in the prefecture of Gifu.

Art. 2.—These Public Loan Bonds shall be limited to the amount of *yen* 20,000,000 and they shall be issued gradually by the Minister for Finance as the progress of the work demands. As to the details of each issue, the Minister for Finance will fix them at the time of making the issues.

Art. 3.—These Public Loan Bonds shall not bear the name of the owners and shall be of three denominations—*yen* 100, *yen* 500, and *yen* 1,000.

Art. 4.—The interest shall be seven per cent. per annum.

Art. 5.—Should the applications for the bonds exceed the amount required by the Minister for Finance, the number of the bonds to be transferred to the applicants shall be reduced in proportion to the excess. When, however, an application is made for the bonds at a higher price than their fixed value, the amount applied for shall not be reduced. The Minister for Finance will fix the price of issue.

Art. 6.—The Minister for Finance shall exhibit a sample of the bonds.

Art. 7.—The principal of these loan bonds shall not be redeemed for the first five years; but after that they shall be redeemed within twenty-five years by means of yearly drawings. The amount to be repaid shall be notified, at least, sixty days beforehand. The interest shall be paid in June and December, but upon the bonds which have to be redeemed the interest shall be paid up to the date on which the scrip is drawn. The interest shall be paid in paper currency.

Art. 8.—The interest is payable from the date on which the bonds are purchased. If they are paid for before the 15th of the month, the interest is payable for that month, and if paid after the 15th, it dates from the following month.

Art. 9.—The principal and interest shall be paid by the Nippon Bank. Notice of payment will be given thirty days beforehand.

Art. 10.—The interest shall also be paid at the branches of and agencies of the Nippon Bank.

Art. 11.—Anyone is allowed to buy and sell these bonds.

Art. 12.—When the principal is to be paid, the bond holders living in Tokiyo and Yokohama who having a large number of the bonds—there must be above ten of them—and five officers from the National Debt Bureau and Bureau for Record, must assemble at the Nippon Bank, and the drawing will take place in their presence.

Art. 13.—If the bonds are lost or stolen, the owners must report the particulars (denomination, amount, number, and manner in which the bonds were obtained) to the Minister for Finance through their local authorities. The Minister for Finance must prohibit the purchase or sale of such lost or stolen bonds. Should the bonds be recovered, the fact must be reported to the Minister for Finance. But if such bonds are not found by the end of the period for their redemption, and if they are thought to have been destroyed, the principal shall be repaid to the owners.

Art. 14.—Should the bonds be lost at the time the drawings are notified, they shall be excluded from the drawing.

Art. 15.—When the bonds are spoiled or torn, new ones can be procured on making application at the Treasury Department through the Nippon Bank and on payment of the necessary fees.

Art. 16.—Should the bonds be spoiled in such a manner that the denomination, stamp of the Minister for Finance, etc., are unrecognizable, they shall be regarded in the same manner as lost or stolen bonds.

Art. 17.—Should the application for the payment of the interest not be made for fifteen years after the interest fell due, the owners shall not be entitled to either the principal or interest.

Art. 18.—These rules are subject to modification, excepting as to the amount of interest and the period of redemption, at the convenience of the Government.

(By Imperial Order)

Sanjo Saneyoshi,
First Minister of State.

Matsukata Masayoshi,
Minister of Finance.

December, 28th 1883.

Extract from the Japan Daily Mail.

NOTIFICATION No. 48.

The following Regulations for the issue of Loan Bonds in exchange for *Kinsatsu* and not bearing the name of the holder, are hereby enacted, and Article III. of Notification No. 47 of 1880 is cancelled.

Regulations for the issue of Loan Bonds in exchange for *Kinsatsu* and not bearing the name of the holder:—

Art. 1.—With the object of resuming specie payments, Loan Bonds will be exchanged for the paper money issued by the Government. The Bonds will not bear the name of the holder; their principal and interest will both be payable in specie, and the paper money against which they are exchanged will be destroyed by fire at the Finance Department.

Art. 2.—The Bonds will be issued by the Minister of Finance according to the desire of applicants, but it shall be competent for the Minister to reject applications according to the convenience of the national finances.

Art. 3.—The Bonds will be interest bearing, without the name of the holder, and of three dimensions, viz., 1,000 *yen*, 500 *yen*, and 100 *yen*.

Art. 4.—The interest on the Bonds will be six per cent. per annum.

Art. 5.—The Bonds will be issued at par, and applications for them may be made at the Bank of Japan or at any of its branches or agencies.

Art. 6.—The form of the Bonds will be determined by the Finance Minister.

Art. 7.—The redemption of the Bonds will commence five years after the year in which they are issued and will extend over a period of 30 years. The amount to be redeemed on each occasion will be made known by the Finance Minister sixty days at least before the date of drawing, and the interest will be paid twice every year, in May and November, so long as the principal remains unredeemed. When a Bond is drawn for redemption its interest will be calculated for the number of months that shall have elapsed since the date of the last payment, and the same rule will be observed in the case of Bonds which mature.

Art. 8.—The Bonds will be divided into those which have been purchased during the first fifteen days of the month and those purchased within the second fifteen days. On the former, half the month's interest will be paid: on the latter, the interest will be reckoned from the first of the following month.

Art. 9.—All business connected with the redemption of the Bonds and the payment of interest will be managed by the Bank of Japan. Dates and places will be determined by the Finance Minister, thirty days at least before the day of drawing.

Art. 10.—The interest on the Bonds willl be paid at the Bank of Japan, its branches or agencies, in exchange for the coupons annexed to the Bonds.

Art. 11.—The Bonds may be purchased or dealt in by any one without distinction.

Art. 12.—The amount of Bonds to be redeemed on any occasion will be published by the Bank of Japan, their number, order, denominations, and amount having been fixed by the Minister of Finance. At the time of drawing there shall be present ten of the largest Bondholders, resident in Tokiyo and Yokohama, and five officials of the National Debt Bureau.

Art. 13.—In the event of a Bond being lost, its owner will report, in writing, to the Local Officials for transmission to the Finance Department, the number and denomination of the Bond, the name of its owner, and the circumstances under which it was lost. Thereupon the Finance Minister will prohibit the sale or exchange of the Bond. The same cause will be pursued in the event of the Bond being found. Should a Bond thus lost be not found before the expiration of the period fixed for redemption, it shall be considered cancelled, and the principal and interest will be paid to the person who originally reported the loss.[1]

Art. 14.—Should the loss of a Bond be discovered only at the time of its being drawn for redemption, the drawing shall count for nothing.

Art. 15.—Should a Bond be stained or torn, it may be exchanged on application and payment of a reasonable commission at the Bank of Japan or any of its branches or agencies. Such exchanges must be preceded by a careful examination of the Bond's number, denomination, stamps, and other particulars.

Art. 16.—If at the time of exchanging or redeeming a Bond, it be found so much soiled or torn that the number, denomination, stamps, or other particulars are illegible, the payment of the principal and interest shall be subject to the rules which apply to the case of lost Bonds.

Art. 17.—Bonds of which the principal or interest shall not have been claimed for fifteen years after they fall due, shall cease to be redeemable.

Art. 18.—With the exception of the rate of interest and the period of redemption, these Regulations may be amended or added to in accordance with Government necessity.

(Signed) SANJO SANEYOSHI,
First Minister of State.
MATSUKATA MASAYOSHI,
Minister of Finance.

28th of December, 1883.

[1] Japanese papers interpret this article as embodying the foreign subscribers.

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No. 1794.

U.S. Legation, Japan.

Tokei, January 11th 1884.

Mr. Bingham

To the Secretary of State.

Subject.

The compulsory action of Great Britain and her European Allies in obtaining the Convention of 1866 with Japan, and their persistent refusal to a reasonable revision thereof.

No. 1794. U. S. Legation, Japan.

Tokei, January 11th 1884.

Hon. Frederick T. Frelinghuysen,

Secretary of State.

Washington D. C.

Sir:

Inasmuch as certain of the European Governments have persistently refused to consent to any reasonable revision of their existing Treaties with Japan and as the foreign journals both in China and Great Britain have by way of apology for their refusal to revise the Treaties, falsely represented that the commercial conventions with Japan which was concluded in 1866 was voluntary on the part of the latter and was not obtained by coercion and under cover of

European

European guns as the fact is,
I beg leave to place on record
the enclosed article on that
subject which appeared in the
Japan Daily Mail of the 3d instant
The statements contained in this
article as to the means employed
by Great Britain and her European
allies in 1865. to obtain from this
government the surrender substantially
of its commercial rights under
the then existing treaties and
which rights were agreed to be
surrendered by this government
under coercion and were in fact
so surrendered by the convention
of 1866, cannot be successfully
controverted, nor in my opinion can
the action of Great Britain
in

in the premises be even colourably justified.

It is a pleasure to record that our government has signified its readiness to remedy this great wrong by a revision of our existing Treaties with Japan on the basis proposed by His Japanese Majesty's government in the Protocols of 1882, and that our government did also by solemn treaty with Japan declare the same purpose in 1878.

I have the honor to be, Sir,

Your obedient servant.

M. A. Singhams

Enclosure.

Article from the Japan Daily Mail of the 3d instant.

The Japan Daily Mail.

YOKOHAMA, THURSDAY, JANUARY 3, 1884.

THE Resolutions passed, on November the 3rd, at a general meeting of the non-official Japanese now residing in England and Scotland are, we believe, a fair expression of the opinions entertained by the educated classes in this country with regard to treaty revision. Years have gone by since this subject passed into a by-word, so much had been written and said about it, and so hopeless did the prospect seem of any settlement being arrived at. Many attempts have been made to show that the delay was not less attributable to Japanese unreadiness and mismanagement, than to foreign obstructiveness, but such arguments are as deficient in honesty as the policy they seek to extenuate is wanting in justice. The plain facts are that a combination of powerful States forcibly compelled Japan, eighteen years ago, to revise her tariff on a basis which should be again subject to revision in 1871, and that the same combination of States has ever since persisted in founding upon that original act of compulsion a claim to withhold from this country the right to manage her own fiscal affairs. We are very well aware that there are some lovers of euphemisms who object to admit that the SHOGUN'S Government was subjected to any compulsion in these arrangements, and who would have the world believe that the concessions obtained by the Foreign Representatives in 1865 were quite voluntary, so far as the Japanese were concerned. Such scruples are intelligible enough, but they cannot be reconciled with history. European Governments, whether reluctant to submit their dealings with Japan to public scrutiny, or for some other reasons of high policy, have been for many years careful to depart, in her case, from the ordinary rule which prescribes the occasional publication of diplomatic correspondence. This secretive system had not, however, been inaugurated in 1866, and we are thus enabled to quote the words of Sir HARRY PARKES himself, who, speaking on behalf of his colleagues and describing the steps they had taken with a view to submitting their proposals to the Japanese, wrote thus to Earl RUSSELL:—"On considering the manner in which these proposals should be laid before the Government of the TYCOON, we were of opinion that our reference (to him) could be made more effectually by ourselves, provided we could proceed to the Bay of Osaka and be accompanied by an imposing naval force." It may, perhaps, be said that the object of the Foreign Representatives in causing themselves to be escorted by eight ships of war was simply to furnish employment to the English, French, and Dutch Fleets, and that nothing was farther from their thoughts than to intimidate the Japanese. But which of us is there who, if men came with blunderbusses in their hands and asked him to sign an agreement embodying conditions known to be distasteful to him, would agree that he was under no duress because his life was not verbally threatened? When the Doyen of the Foreign Representatives addressed to the Japanese Ministers at Osaka a despatch "demanding a prompt and satisfactory settlement of certain questions of grave importance arising out of the Convention of October 22nd, 1864," and when he concluded his despatch by calling attention to the fact that he was "accompanied by the Commander-in-Chief of all the naval forces of Her Britannic Majesty in China and Japan," and that his letter was "dated from that officers's flagship," the Japanese must have been singularly sanguine or curiously naïve if they mistook the alternative implied by his attitude in the event of their refusal to satisfy his demands.

The Convention here alluded to was that concluded after the Shimonoseki expedition. Amongst other things, it stipulated for the payment by the SHOGUN of an indemnity of three million dollars. Her Majesty's Government subsequently decided that "the general interests of trade and of foreign relations with Japan would be best consulted by an arrangement which should absolve the Government of the TYCOON from two-thirds of the whole indemnity, provided, first that the port of Hiyogo and the city of Osaka should be opened for the trade and residence of the subjects of the Treaty Powers on the 1st of January, 1866; secondly, that the sanction of the Mikado be formally given to the treaties already concluded by the TYCOON with the Treaty Powers; and thirdly, that the duties on imports into Japan be generally reduced to 5 per cent., and in no case exceed 10 per cent."[1] These were the three conditions to obtain which the Foreign Representatives visited Osaka, in 1865, with a combined fleet of English, French, and Dutch ships. They obtained two of them, and Sir HARRY PARKES, reporting this result to Earl RUSSELL wrote:—"I beg your Lordship to observe that the sanction to the Treaties and the revision of the Tariff, these being two of the three conditions for which Her Majesty's Government were willing to relinquish two-thirds of the indemnity due under the Convention of October 22nd, 1864, have been obtained." The third condition, the immediate opening of Hiyogo and Osaka, was considered impossible in the then condition of affairs, and we now know that it would probably have led to serious trouble.

[1] Earl Russell to Sir F. Bruce, July 12th, 1865.
[2] Convention of October 22nd, 1864.

The Foreign Representatives were therefore compelled to be satisfied with obtaining two of the concessions for which two-thirds of the indemnity was to have been remitted. But they did not remit a dollar.

See, then, the sequence of events. In 1864, "the hostile acts of a Japanese Daimiyo assumed such formidable proportions as to make it difficult for the TYCOON faithfully to observe the treaties."[2] Four of the Treaty Powers accordingly undertook "the duty of chastising this rebellious Daimiyo." As guerdon for their services they then imposed on the TAIKUN a fine of three million dollars. Subsequently, they announced their willingness to remit two-thirds of the fine if the Japanese Government would make them three concessions. The Japanese Government hesitated about the concessions, being, in fact, unable to guarantee them, but went on paying the instalments of the indemnity. The Treaty Powers sent eight men-of-war to Osaka to remind the TAIKUN that there was an alternative to the payment of the indemnity. The TAIKUN then accepted and fulfilled two of the three alternative conditions. Finally—the indemnity was exacted to the uttermost farthing, and one of the concessions obtained by the Foreign Representatives with their combined fleets was thenceforth regarded as conferring on the Treaty Powers a title to withhold from Japan in perpetuity the right of regulating her own tariff.

It is thus that every Japanese reads, and every fair-minded foreigner must also read, the story of these events. They do not furnish any valid reason to impeach the motives or principles of the persons and powers chiefly concerned in them. That is altogether a different question. Humanity is so constituted that all creeds must adapt themselves to circumstances. But it would surprise us much to be told that the policy of duress and dictation which was considered applicable to Japan's semi-anarchic state in 1865, is to form the basis of her treatment by Western nations in 1883.

Those who have taken any trouble to watch the course of popular feeling in Japan during the past five years will readily endorse the statement embodied in the Langham Hotel Resolutions that the delay in the revision of the treaties is "endangering the continuance of the present good feeling towards foreigners." It has been frequently pointed out in these columns that the position of the present Government with regard to its foreign relations bears a striking resemblance to the some-time position of the SHOGUN'S Government. Twenty years ago, the most powerful weapon placed in the hands of the revolutionary party was the seemingly craven attitude of the Yedo Court towards Western nations; an attitude which, according to the creed of those days, was inconsistent with every patriotic dictate. At present, the Opposition has nothing stronger to urge against the Government than its apparent inability to obtain from Western Powers a practical recognition of Japan's independence. The people have either to believe that their rulers are singularly incompetent; or that rights exercised by every other free country in the universe are arbitrarily denied to Japan by civilized Europe. The vernacular press is gradually teaching its readers to accept the latter version of the dead-lock, and their disposition towards foreigners is not improved by the lesson; while at the same time, the Government's difficulty in pursuing a patient and conciliatory policy is becoming daily more formidable. Even the Japanese residing in Great Britain call for an "exercise of greater energy," implying that they are still disposed to blame their own Government's inability rather than foreign injustice. They do not hesitate, too, to indicate the route they would have pursued should it be found impossible to bring the negotiations to a speedy and satisfactory conclusion. "Proper steps must be taken to put an end to those portions of the existing Treaties which are detrimental to our national interests." In other words, Japan must repudiate the treaties, or such parts of them as impair her independent rights. This is an alternative from which the Government may well shrink until it has exhausted every conceivable expedient to arrive at an amicable understanding. The difficulties it has to contend with are great, but not invincible. Foremost among them is that coalition of Treaty Powers by which European Governments set so much store in former days. Not that there is any acknowledged disposition to overawe Japan by the irresistible strength of the coalition, but that it is almost hopeless for her to obtain an unanimous recognition of her rights from a dozen States each of which is as solicitous to consult the other's wishes as it is indifferent to this country's claims. That indifference, however, is certainly not attributable to a desire, or even a willingness, to be arbitrary or unjust. Even in England, which Japan has learned to regard as the most obdurate of her treaty friends, and which, having incomparably the largest interests at stake, is compelled to be the most chary of concession, there exists a spirit of fairness and liberality ready at any moment to find active expression if only it be properly appealed to. We believe that the chief cause of Japan's inability to obtain a recognition of her just claims is the ignorance which prevails among Europeans about everything that concerns her, and for this reason public expressions of opinion, such as that made at the Langham Hotel, cannot fail to produce a useful effect.

DEPARTMENT OF STATE
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acted with thanks February 14, 84 Cipher.

Book to Library February 14, 84 Cipher.

No. 1795.

M. S. Legation Japan.

Tokei, Janry 11th 1884.

Hon. Brigham.

To the Secretary of State.

Subject-

"Earthquake Measurement." a Memoir of the Science Department, University of Tokio.

No. 1795. U. S. Legation in Japan.

Tokei, January 16th 1884.

Hon. Frederick T. Frelinghuysen,

Secretary of State,

Washington, D. C.

Sir:

Herewith I beg to transmit for your information an interesting paper kindly sent to me by the President of the University of Tokio entitled "Memoirs of the Science Department Tokio University."

I have the honor to be, Sir,

Your obedient servant,

Mc C Brigham

Enclosure.

Memoirs of the Science Department Tokio Daigaku. University of Tokio.

Earthquake Measurement.

Sent by no 1 file

Writing

No. 1796.

Both sent to Library

United States Legation

Tokei Japan, 12th Jany 1884.

Mr. Bingham

To the Secretary of State

Subject.

Transmitting Paper on Missionary Health (in Japan) by Dr. J. C. Berry.

No 1796. United States Legation

Tokei Japan, 12th Jany 1884.

Hon. Frederick T. Frelinghuysen,

Secretary of State

Washington D.C.

Sir:

Having been favored by Doctor J. C. Berry, who is a citizen of the United States, with a copy of his valuable and instructive paper entitled "Missionary Health," I beg leave to enclose the same for your information.

The paper treats of the Climate of Japan and China, and its influence upon the health of Western people, while the Chart annexed thereto gives tables of the temperature and humidity of many places in

in this Empire; and also of the mean annual temperature and relative humidity of many points in the East and West.

I have the honor to be,

Sir,

Your obedient servant,

Jno. A Humphrey

Enclosure:

Pamphlet entitled "Missionary Health" (in Japan) by Dr J. C. Berry - Okayama Japan.

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No. 1797.

United States Legation

Yokei, Japan, 15th Jany 1884.

Mr. Bingham

To the Secretary of State

Subject.

Receipt of Instructions numbered 780 to 788 inclusive and also Circular Instructions relating to the holding of the proposed Zero of Longitude Conference on Oct 1st 1884.

No 1797. United States Legation

Yokei, Japan, 15th Jany 1884.

Hon. Frederick T. Frelinghuysen,

Secretary of State

Washington D.C.

Sir:

I have the honor to acknowledge the receipt of Instructions numbered respectively, 780, 781, 782, 783, 784, 785, 786, 787 and 788, with their several enclosures; also Circular Instruction dated Dec 1st 1883, in relation to the time fixed by the President for the assembling of the "Delegates appointed by the United States and other Governments in International Conference at Washington on the 1st day of October 1884 (the day appointed by

by the President-) for the purpose of discussing, and, if possible, fixing upon a Meridian proper to be employed as a common Zero of longitude and standard of time reckoning throughout the globe."

I have the honor to be

Sir,

Your obedient servant,

Wm. A. Rinehart

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No. 1798.

with copy of Return
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To Mr Lowber

United States Legation,

Tokei, Japan, 16th Jany. 1884.

Mr. Bingham

To the Secretary of State.

Subject.

Monthly returns of the Foreign Trade of Japan for November 1883:

No. 1798. United States Legation

Tokei, Japan, Jany 16th 1884.

Hon. Frederick T. Frelinghuysen,

Secretary of State,

Washington D.C.

Sir:

Herewith I have the honor to enclose for your information, and that of the Honorable the Secretary of the Treasury, duplicate copies of the "Monthly Return of the Foreign Trade of Japan for December 1883."

The return shews (p.1) that the total value of commodities "exported within the month was Yen 4,320,083 92/100, and that the total value of commodities imported within the month was Yen 2,020,228 15/100 the exports being in excess of the imports

imports Yen 2,299,855 44/100.

It also appears (p. 4) that the total value of Specie and bullion exported during the month amounted to Yen 108,594 49/100, and the total value of the import thereof within the month to Yen 1,440,793 21/100.

I have the honor to be

Sir,

Your Obedient Servant.

Wm A Bringham

Enclosures under separate Cover.

Duplicate Copies of the "Monthly Returns of the Foreign Trade of Japan for the Month of November 1883."

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No. 1799. ack'd by 4th Mail

U. S. Legation, Japan.

Tokei, Jany 16th 1884.

Hon. Bingham.

To the Secretary of State.

Subject.

The Japanese Government notified of the meeting of the International Conference for determining the zero of longitude and standard of time. to take place at Washington, Oct. 1st 1884.

No. 1799. U. S. Legation, Japan

Tokei, Jany 16th 1884.

Hon. Frederick T. Frelinghuysen,

Secretary of State,

Washington, D. C.

Sir:

Referring to your circular instruction of date the 1st of Dec. 1883 proclaiming that the President has appointed the 1st day of October for the meeting in Washington of the proposed conference of nations to agree if possible upon a common zero of longitude and a standard of time reckoning throughout the globe; I have the honor to acquaint you that in accordance with that instruction I have extended through the Minister for Foreign Affairs an

invitation to His Imperial Japanese Majesty's government to be represented by one or more delegates (not exceeding three (3)) in the said International conference.

Herewith I beg leave to enclose a copy of the communication on the subject which I had the honor to address on yesterday to His Excellency Mr. Ito, His Majesty's Acting Minister for Foreign Affairs.

This government I have no doubt will send one or more delegates to the conference as I have heretofore reported to you in my No. 1646.

I have the honor to be, Sir,

Your obedient servant,

John A. Bingham

Enclosure.
Mr. Bingham to Mr. Ito dated Jan'y 15th 1884.

Enclosure No. 1 with Mr. Bingham's No. 179.

Copy.

No. 2252. United States Legation

Yokohama, Japan, 15th January 1884.

His Excellency

Sto Hirobumi,

Sangi and H. I. J. M's Acting Minister

for Foreign Affairs.

Sir:

Referring to my No. 1927 of date the 7th of December 1882, which I had the honor to address to His Excellency Mr. Inouye concerning the Conventions proposed to be held at Washington by delegates appointed by the United States and governments of other foreign nations on a day to be thereafter designated by the President of the United States, I now beg leave to

to inform you that the President of
has named the first day of
October next (1884) as the day for the
assembling in International Conference
of the delegates appointed or to be
appointed for the purpose of
discussing, and if possible fixing
upon a Meridian proper to be
employed as a common zero of
longitude and standard of time
reckoning throughout the globe.

In accordance with the
instructions of my Government
(a copy of which Instructions I
have the honor to enclose) I beg
leave through you to tender to
His Imperial Japanese Majesty's
Government an invitation to be
represented by one or more delegates
(not

(not exceeding three (3)) to meet the delegates from the United States and other nations in the proposed International Conference at Washington on the 1st day of October 1884.

You will please observe that Mr. Inouye in his No. 25 of date June 6th last (1883) in reply to my note No. 2031 of date May 26th 1883, informed me that Mr. Kikuchi Dairoku the gentleman appointed by His Majesty's Government to represent Japan in the proposed Conference had been duly notified as requested by me that the day for the meeting of the Conference had not been determined.

I have now the honor to request that you will be pleased to notify

Mr. Kikuchi

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No 1600. U. S. Legation Japan.

Tokei, Jan'y 16th 1884

Hon. Bingham,

To the Secretary of State.

Subject.

Receipt of Record Book entitled

"Dispatches to the Department of State".

No. 1800. U. S. Legation, Japan.

Yokei, January 16th 1884.

Hon. Frederick T. Frelinghuysen,

Secretary of State,

Washington, D. C.

Sir:

I have the honor to acknowledge with thanks the receipt of a blank volume for the record of "Dispatches to the Department of State."

I have the honor to be, Sir,

Your obedient servant.

Jno. A. Bingham

DEPARTMENT OF STATE
FEB
12
1884
RECEIVED

acct by mail

Wing

No. 1801.

U. S. Legation, Japan.

Tokei, Jan 16th 1884.

Mr. Bingham

To the Secretary of State,

Subject

The President's Message and the transmission of a copy of it to the Japanese government.

No. 1801. U. S. Legation, Japan.

Tokei, Jan'y 16th 1884.

Hon. Frederick T. Frelinghuysen.

Secretary of State,

Washington D.C.

Sir:

I pray you to be pleased to accept my grateful acknowledgments for official copies of the President's Message communicated to the two Houses of Congress at the beginning of the 1st Session of the 48th Congress.

The perusal of this great State paper has given me much pleasure, as doubtless its perusal has given a pleasure to and commanded the approval of the people of the United States.

Permit me to say of the Message that

that it is eminently worthy of the President, worthy of our country and of this enlightened age.

It seemed to me that it was fitting that the attention of His Imperial Japanese Majesty's Government should be especially called by me to the statement of the President, "that the Government of the United "States is disposed to concede the "requests of Japan to determine its own "tariff duties, to provide such proper "judicial tribunals as may commend "themselves to the Western Powers "for the trial of causes to which "foreigners are parties and to assim- "ilate the terms and duration of "its treaties to those of other civilized "States."

I

I have therefore addressed a note, to His Majesty's Acting Minister for Foreign Affairs transmitting therewith a copy of the message and pointed out the paragraph above mentioned, a copy of which note is herewith.

I have the honor to be, Sir,

Your obedient servant.

Mc A. Bingham

Enclosure.

Mr. Bingham to Mr. Dto, dated Jan. 16th/84.

Enclosure No. 1 with Mr. Brughuis's No 1501.

(Copy)

His Excellency

Ito Hirobumi, Sangi

H. I. J. M's Acting Minister for Foreign Affairs.

Sir:

I am in receipt of Official copies of the recent Annual Message of the President of the United States to the Congress thereof; one of which copies I have the honor to transmit herewith for your information.

It gives me much pleasure to point out for your special attention the paragraph on page 6 of the message wherein the President refers to the question of the general revision of the Foreign Treaties of Japan, and declares that the Government of the

the United States is disposed to concede the requests of Japan to determine its own tariff duties, to provide such proper judicial tribunals as may commend themselves to the Western Powers for the trial of causes to which foreigners are parties, and to assimilate the terms and durations of its treaties to those of other civilized States.

You will observe that the President thus proclaims the disposition of our Government to concede in the revision of the Japanese Treaties the requests of the Imperial Japanese Majesty's Government as set forth in the Protocols of the International Conference for the revision of Treaties held in Tokio in 1882.

Accept

accept the renewed assurance
of my highest consideration.

(Sgd) Jno A Bingham

Enclosure - Presidents Message to
Congress 1883 (not enclosed Lemmit)

DEPARTMENT OF STATE
FEB
12
1884
RECEIVED

Dr. Benedict

Mr Wing

No 1802

United States Legation

Tokei, Japan 17th Jany 1884.

Mr. Bingham

To the Secretary of State.

Subject.

Foreign Passports issued during 1883.

also quarterly report of Passports for the

4th quarter 1883.

No. 1802 U.S. Legation

Yokei Japan 17th Jany 1884.

Hon. Frederick T. Frelinghuysen

Secretary of State,

Washington D.C.

N.B.

Sir:

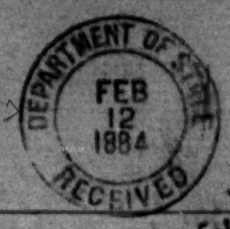
I have the honor to report that during the last year (1883) the whole number of passports issued by me was three (3) only, one of which, to Mr. Charles Henry Cooper, was issued on the 2nd August last and was reported in my No. 1755 of date the 4th Oct. last, and the fee of $5.00 received therefor was accounted for by me to the Government in my No. 1754 of date Oct. 4th 1883, transmitting my account for the 3rd quarter of last year, the other two passports, above referred to, were as follows: to

Miss

Miss Marion Talcott and Miss Elga Talcott, to each of whom a Passport was issued by me on the 20th of Nov. 1883 upon their respective affidavits filed in this Legation that they are natural born citizens of the United States, and have never become subject to against the United States. Miss Marion Talcott further filed in support of her Application the passport issued to her by the Department, dated January 20th 1873, and numbered 26723.

The fee of $5.00 received by me for each of these two passports last named (in gross $10.) is set to the credit of the Government and accounted for in my account of Contingencies for the fourth quarter of the year 1883. See my No. 180 with my accounts.

I have the honor to be, Sir,
Your obedient Servant
M. A. Bingham



Dispatch from Legation to the Dept. of State
Transmitting Ginseng seeds
Feby 15, 1884
Cristler

Encloses. Feby 15, 1884
Cristler

No. 1803.

United States Legation

Yokei, Japan, 14th Jany. 1884.

Mr. Bingham

To the Secretary of State.

Subject.

Transmitting Ginseng seeds of Manchoonia.

No. 1803. United States Legation,

Tokei, Japan, 14th Jany 1884.

Hon. Frederick T. Frelinghuysen,

Secretary of State,

Washington, D.C.

Sir:

Referring to your Instruction No. 734, dated May 3rd 1883, Enclosing letter of the Hon. Mr. Money, in relation to the procuring of the seeds of the Japanese Ninjen (Ginseng) and the Manchoorian Ninjen (Ginseng). I have the honor to inform you that on the 8th of June last I made application to Mr. Yoshida, then Acting Minister for Foreign Affairs, (per my note a copy of which is herewith), to be favored with a supply of the

the seeds above mentioned, to which Mr. Godshida made answer by note dated the 15th of June
/2 last (a copy of which is enclosed) in which he informed me that my request had been communicated and application made to the proper authorities for the seeds desired, and in further reply to my note on the 30th ultimo I received from His Excellency Ito Hirobumi the present acting Minister for Foreign Affairs a note dated the 28th ult. (a copy of which
/3 is herewith) acquainting me that he could only at that time procure the Manchoorian seed a package of which he transmitted to me together with a statement in

Japanese

Japanese for the information of our Government, suggesting the Method of Cultivation.

I have the honor to enclose 4 a translation copy of said statement.

The package of seeds enclosed 5 in a small bag is also transmitted, separately, with this dispatch.

You will please observe that Mr. Ito states in his note his inability to supply at present, the Japanese Ginseng seeds but that he will procure and forward the same during the coming year.

I have the honor to be, Sir,

Your Obedient servant,

Wm. H. Seward

Enclosures

Enclosures:-

(1) Mr. Bingham to Mr. Goshida of date June 8th 1883.

(2) Mr. Goshida to Mr. Bingham of date June 15th 1883.

(3) Mr. Ito to Mr. Bingham of date December 28th 1883.

(4) Note on Method of Cultivation of the Ginseng (Translation)

(5) Package of Ginseng seeds in box separate.

Enclosure No 1 with Mr. Brugham's No. 1803.

Copy.

No. 2046. U. S. Legation

Yokei Japan, 8th June 1883.

His Excellency

Goshida Kigonari

H. I. J. M's Acting Minister for Foreign Affairs

Sir:

In accordance with instructions from my Government I beg leave most respectfully to request that I may be furnished for transmission to the United States, for the purpose of propagation, a few packages of plant seeds of the Panax Japonicum Ninjin Ginseng, also of the Panax — Manchuria Ninjin Ginseng: the latter supposed to be Chinese, but cultivated in Japan, and the former supposed to

to be indigenous to Japan, &c.

It is desirable that the seeds should be fresh, properly cured and carefully put up for transportation.

Hoping that it may be convenient for your Government to grant this request, I beg leave to renew to Your Excellency the assurance of my highest consideration.

(sgd) Jno A Bingham.

Enclosure No. 2 with Mr. Bingham's No. 803.

Translation (Copy)

No 28. Foreign Office, Tokio

The 15th the 6th month

the 16th year Meiji (June 16th 1883)

His Excellency

John A. Bingham

&c &c, &c

Sir:

I have the honor to acknowledge the receipt of Your Excellency's note dated the 8th instant in which in pursuance of instructions from your Government you request me to forward to you for transmission to the United States for the purpose of propagation a few packages of plant seeds of the Panax Japonica and also of the Panax Mandshurica.

I

I beg leave to acquaint Your Excellency in reply that I at once communicated your desire to the proper authorities and requested that a supply of the seeds of the Panax be forwarded to you.

I avail myself of this occasion to renew to Your Excellency the assurance of my highest consideration

Yoshida Kiyonari

H. I. J. M's Acting Minister for Foreign Affairs.

Enclosure No 3 with Mr. Brighams No. 1803.

Translation (Copy)

Foreign Office, Tokio

The 28th the 12th month

the 16th year Meiji -(1883)

His Excellency

John A. Bingham

&c &c &c

Sir:

With reference to Your Excellency's note in which you requested a quantity of the seeds of Japanese and Manchurian ginseng, and to His Excellency Mr. Inouye's reply dated the 15th June last, in which he acquainted you that he had communicated the request of your Government to the proper authorities, I have now the honor to

to forward, herewith, a package of seeds of Manchourian ginseng together with a statement (in Japanese) for the information of your Government suggesting the method of cultivation, both of which were transmitted to me by the proper authorities in response to the application from this Department.

I regret, however exceedingly that I find myself unable to supply Your Excellency with seeds of Japanese ginseng; but I shall not fail to forward the same during the coming year. I am advised by the proper authorities that it was impossible to procure the native seeds in view of the fact

that ginseng is not cultivated in Japan, and that which grows wild disappears after it becomes fully developed. I am assured however that measures will be taken to secure the desired seeds next year.

I avail myself of this occasion to renew to Your Excellency the assurance of my highest consideration.

(Signed) Ito Hirobumi, Sangi
Acting Minister
for Foreign Affairs.

DEPARTMENT OF STATE
FEB
12
1884
RECEIVED

No. 1804.

U.S. Legation, Japan.

Tokei, Jan'y 19th 1884.

Hon. Bingham.

To the Secretary of State.

Subject.

Salary and Contingent Expense account for the 4th Quarter of 1883.

No. 1804. U. S. Legation, Japan.

Tokei, Jany 17th 1884.

Hon. Frederick T. Frelinghuysen.

Secretary of State.

Washington, D. C.

Sir:

Herewith I have the honor to transmit my several accounts separately for salary and contingent expenses for the fourth quarter of the year 1883 with the vouchers therefor.

2/

On account of salary for said quarter I drew my bill Dec. 31st 1883 on Messrs. Morton, Rose & Co. London for £616. 9. 2. and received therefor at the current rate of exchange as shewn by the Banker's certificate herewith, the equivalent of $3000.00 U.S. gold and no more.

In

In my account for contingent expenses for the said 4th quarter you will observe that I credit the Government with balance in my hands on 30th Sept. 1883, as shewn by my account of the third quarter the sum of $34.33; that I also credit the Government therein with the proceeds of my bill for £41.1.11 drawn 31st Dec. 1883 on Morton, Rose & Co. on account of contingencies for which I received at the current rate of exchange as shewn by the Bankers Certificate herewith the equivalent of $200 U. S. gold and no more; that I also credit the Government with the sum of $10 received for passports issued by me to Miss Maria Talcott and Miss Eliza Talcott as reported in my despatch No. 1802, of even date herewith.

making

Making a total credit to the Govern-
-ment in my said account herewith
for contingencies for the 4th quarter
of the year 1863, of $244.33 U.S. gold
and that I debit the Government
therein for sums paid by me on
account of contingencies for said
fourth quarter with the sum total
of $204.69 U.S. gold which sum
being deducted from said total
credits to the Government amounting
to $244.33 U.S. gold, leaves a balance
thereof unexpended in my hands of
$39.64 U.S. gold, due to the Govern-
-ment to be accounted for in my contingent
account for the current quarter.

I have the honor to be, Sir,

Your obedient servant

Wm H Bingham

Enclosures.

Enclosures. 2.

No. 1. Salary Account for the 4th quarter of 1883.

No. 2. Contingent Expense Account for the 4th quarter of 1883.

DEPARTMENT OF STATE
MAR
31
1884
RECEIVED

Mr Knight Chaffee

Tientsin

No 1805.

United States Legation

Tokei, Japan, Jany 31st 1884

Mr. Bingham

To the Secretary of State.

Subject.

Duplicate Accounts for Salary and Contingent Expenses for the fourth Quarter 1883.

DEPARTMENT OF STATE
MAR 31 1884
RECEIVED.

No. 1805. United States Legation

Yokei, Japan, Jany 31st 1884

Hon. Frederick T. Frelinghuysen

Secretary of State

Washington D.C.,

Sir:

Referring to My No. 1804 of date the 17th inst. with which I had the honor to enclose my accounts, with the necessary vouchers for salary and contingent expenses for the fourth quarter of last year, I now beg leave to enclose herewith duplicates of my said accounts with the vouchers for the same

I have the honor to be, Sir,

Your Obedient Servant

John A Bingham

Enclosures:- Salary and Contingent Expense accounts (Separate) for the 4th quarter 1883 - (Duplicates) with Bankers Certificate of purchase of drafts, and vouchers.

Mr Keckhoefer

Mr Lowell

United States Legation,

Yokei, Japan, January 31st 1884.

W. N. Whitney, Interpreter,

To the Secretary of State

Subject,

Duplicate Salary account for the 4th quarter, 1883.

United States Legation

Yokei, Japan, Jany 21st 1884.

Hon. Frederick T. Frelinghuysen,

Secretary of State,

Washington, D.C.

Sir:

Referring to my letter of date the 21st of December last with which I had the honor to enclose my account, with the necessary vouchers for salary for the Fourth quarter of 1883, I now beg leave to enclose herewith a duplicate of my said account with the voucher for the same.

I have the honor to be Sir,

Your Obedient Servant,

Willis R. Whitney

Interpreter.

Enclosure - Statement of Salary account with Voucher for sale of draft. (Duplicate)

Copy to War dept. April 2' per order

Lurking

No. 1806

United States Legation

Yokei Japan Jany 31st 1884

Mr. Bingham

To the Secretary of State

Subject

Japanese Weather Reports January 1884.

No. 1806 United States Legation

Yokei, Japan, Jany 31st 1884.

Hon. Frederick T. Frelinghuysen

Secretary of State

Washington D.C.

Sir:

Herewith I have the honor to transmit for the information of the Signal Service, the daily weather reports for the month of January, 1884, of the Imperial Meteorological Observatory at Yokio, Japan.

I have the honor to be,

Sir

Your Obedient Servant

Jno A Kinghuysen

Enclosure -

Weather reports for January 1884 under separate cover.

Action approved
Mr B's action
April 2 1st
entitled.

DEPARTMENT OF STATE
MAR 31 1884
RECEIVED.

No. 1807. United States Legation

Tokei, Japan, 19th Feby 1884.

Mr. Bingham

To the Secretary of State

Subject.

Storage of Explosives Regulations

No. 1807. United States Legation

Tokei, Japan, 19th Feby 1884.

Hon. Frederick T. Frelinghuysen

Secretary of State

Washington D.C.

Sir:

Referring to my No. 1782 of date the 4th December last wherein I acquainted you of my action concerning the Regulations of this Government relating to the Storage of Gunpowder and other explosives I now beg leave to enclose herewith a copy of the reply of His Excellency Mr. Ito His Imperial Majesty's acting Minister for Foreign Affairs dated the 28th of December last to the Collective note of the Diplomatic Corps on the subject, wherein you will please note that the Minister informs me that

His

His Majesty's Government is prepared to modify Art. II of the Regulations as follows: "Art 2. Persons desirous "of storing Gunpowder, Nitrate mixture, "Nitro Compound, Chlorate Mixture, "Fulminate, Ammunition, Firearms "or other substances of a fulminating "or explosive nature must make to "the Kuchcha an application as provided "in the original Art 2 of the Regulations"

The Minister further states in his reply that "the rate of storage was "fixed at as low a figure as possible "in order to give every advantage to "persons applying for storage", and that, "the present rate of Charges (5 cents silver "per cubic foot per month) is not sufficient "to defray the costs incidental to the "maintainance of the Magazines."

On

On the 11th ultimo I enclosed a copy of the Minister's reply with a note addressed by me as Doyen of the Diplomatic Corps to my Colleagues, a copy of which note is herewith, wherein I concurred with the Minister's views as expressed in his note, and with which views my several Colleagues (except Mr. French the British Charge d'Affaires) expressed their concurrence by underwriting my note with the word "Concur" over their several signatures and returning the same to me so endorsed. Mr. French said that he concurred generally in the conclusions arrived at on the question, save that on the rate of Storage Charges, fixed by the Regulations

he

he thought it his duty to reserve on that question to Her Britannic Majesty's Minister the right of making, should he see fit, further representations.

On the 11th inst. I addressed a communication to Mr. Ito (a copy of which communication is enclosed) wherein I acquainted the Minister that all my Colleagues (except Mr French) concurred with me in the views expressed by His Excellency in his note of the 28th of December last, and suggested that the amendment to Art. II of said Regulations should be officially published by His Majesty's Government in one or more of the English Journals at Yokohama, and added, you will please

3

observe

observe that "it will be readily
"understood that this amended
"Article No. 2 does not include
"and has no application to Kerosene
"Oil, as that is stored under other
"and very different Regulations"

I made this last remark out of Abundant Caution, and to exclude any other Conclusion than as therein stated by me.

I have the Honor to be,

Sir,

Your Obedient-Servant,

M. C. Bingham

Enclosures -

1. Mr. Ito to Mr. Bingham and other Foreign Representatives. Dec 28th 1883.

2. Mr. Bingham to Diplomatic Representatives Jany. 11th 1884

3. Mr. Bingham to Mr. Ito Jany 11th 1884

Enclosure No. 1 with Mr. Bingham's No 1807

Translation Copy

Foreign Office, Tokio,

December 28th 1883.

H.E. Jno A. Bingham

Envoy Extraordinary and Minister Plenipotentiary

of the United States of America.

H.E. Charles de Groote

His Belgian Majesty's Envoy Extraordinary

and Minister Plenipotentiary

H.E. Li Shu Chang

His Imperial Chinese Majesty's Envoy

Extraordinary and Minister Plenipotentiary

H.E. Count Doenhoff

His Imperial German Majesty's

Envoy Extraordinary and Minister Plenipotentiary

H.E. J.A. Sienkiewicz

Envoy Extraordinary and Minister

Plenipotentiary of France.

H. E.

A Daindoff

His Imperial Russian Majesty's

Envoy Extraordinary and Minister

Plenipotentiary

H. E. Comte Zaluski

Envoy Extraordinary and Minister

Plenipotentiary of His Majesty

the Emperor of Austria-Hungary.

H. E. J. J. van der Pot

His Netherlands Majesty's Minister

Resident.

H. E. Louis del Castillo y Iziguerdo

Minister Resident of His Catholic

Majesty the King of Spain

Chevalier C. Martin Sanciarez

His Italian Majesty's Charge d'Affaires

The Honorable P. Le Poer French,

Her Britannic Majesty's Charge d'Affaires.

Sirs:

The undersigned His Imperial Majesty's Acting Minister for Foreign Affairs has the honor to acknowledge the receipt of the Joint-Note which the Foreign Representatives addressed to His Excellency Mr. Inouye on the 6th ultimo suggesting that the following modifications should be introduced into the Regulations for the Storage of Explosives in the Kanagawa Ken and other places issued in May 1883 by H. I. M's Government First that Article II of said regulations should be so amended as to define clearly what Explosives other than Gunpowder are to be stored, subject to the regulations, Secondly that the regulations should expressly provide that

that all importers or holders of either of the several Explosives specified in the regulations should be required -:- without delay after payment of duties thereon, to store the same in the Magazines designated at the port of delivery, and Thirdly that Article XIV of the regulations should be amended so as to provide that the Storage Charges of any of said Explosives shall be at the rate of three cents silver per Month for each Cubic foot English Measurement.

The undersigned in replying to the several suggestions contained in the note under acknowledgement begs to point out in the first place that the increasing variety of Explosives constantly being discovered and utilized rendered it difficult, it was

was thought, to specify in advance otherwise than generically, all the different articles which should be subjected to the Storage Regulations.

In deference however to the views entertained by the Foreign Representatives upon the question the undersigned does not hesitate to declare the readiness of H. I. M's Government to modify article 2 of the Regulations as follows:

Article 2. Persons desiring of storing Gunpowder, Nitrate mixture, Nitro compound, Chlorate mixture, Fulminate, Ammunition, Fire-works or other substances of a fulminating or explosive nature must make to the Kencho an application (and

do

so on, same as in the original.
With reference to the second
suggestion made by the Foreign
Representatives, the undersigned
is of opinion that no necessity
exists for any additional provision
in this respect, in view of the fact
that Japanese subjects who violate
the Regulations will be dealt with
according to the Penal Code, and
foreigners are at present subject
to the provisions contained in Art 7
of the Arrangements for the Control and
Management of the Municipal Affairs
of the Foreign Settlement of Yokohama,
November 4, 1867"

It is obvious therefore to the
undersigned that without
additional legislation neither
Natives

natives nor foreigners can lawfully store any explosives in places other those set apart for that purpose.

The undersigned begs to point out in response to the third suggestion that U. S. M's Government erected the magazines in question for the sole purpose of protecting life and property, and without any desire to reap pecuniary benefit therefrom. Keeping this object steadily in view the rate of storage was fixed, and has been maintained, at as low a figure as possible in order to give every advantage to persons applying for storage.

At the present rate the income

derived

derived from the storage charges is not sufficient to defray the costs incidental to the maintenance of the Magazines.

The undersigned ventures to believe that a careful perusal of the accompanying Tables ⅄ furnished by the Kanagawa Kenrei showing the costs of construction and maintenance of the Magazines, the amount of imported Explosives during three years 1880-82, and the estimated revenue derivable from storage Charges at the present rate will be sufficient to convince the Foreign Representatives that the present rate of storage is by no means high and unreasonable.

The undersigned in Conclusion desires

desires to acquaint the Foreign Representatives that after due consultation on the subject, between the Kenrei of Kanagawa and the Consuls at that port- Mr. Robertson Chairman of the Consular board informed the Kenrei in his letter dated the 3d May last.(a copy of which is herewith enclosed) that there was no objection on the part of the Consuls to the adoption of the Regulations. Notwithstanding this Notification the regulations have not been universally adopted and the undersigned is therefore compelled to urge upon the Foreign Representatives the importance of issuing such instructions as may be necessary in order to secure the general application of the Regulations in question.

The undersigned avails himself etc etc

Ito Hirobumi (Sangi)
Acting Minister for Foreign Affairs

Enclosure No. 2 with Mr. Bingham's No. 180.

United States Legation

Yokei, Japan, 11th January 1884.

My dear Colleague:

Herewith I have the honor to submit for your consideration the letter of His Excellency Mr. Ito, His Imperial Japanese Majesty's Acting Minister for Foreign Affairs, under date the 28th ultimo with two enclosures attached thereto, in reply to our Collective Note of the 6th of November last in relation to the regulations of His Majesty's Government for the Storage of Explosives.

You will observe that His Majesty's Government concurs in the suggestions made by us in our note, save that in relation to the rate of

storage

storage, which as at present established, the Minister states, is at as low a figure as possible; in which opinion it seems to me we should concur.

I will thank you to signify by your endorsement on this note that you have seen and read the Enclosures, and, also, your concurrence or non-concurrence with the views expressed by His Excellency Mr. Ito.

I beg to request that this note with its enclosures may be returned to me after you shall have generally considered the same.

Accept the renewed assurance my dear Colleagues of my highest consideration.

(signed) Jno. A. Bingham

Addressed to

His Excellency

Ch de Brouckere

His Belgian Majesty's Envoy

Extraordinary and Minister

Plenipotentiary.

and to the other General Foreign

Representatives.

Copy to Treasury April 7 1884
Circular

Enclosing

DEPARTMENT OF STATE
MAR 31 1884
RECEIVED.

No. 1808. United States Legation

Yokei, Japan, 19th Feby 1884.

Mr. Bingham

To the Secretary of State

Subject.

Annual production of Japan Teas

4

(Enclosure - Bur. Statistics)

No. 1808. United States Legation

Tokei Japan, 19th Feby. 1884.

Hon. Frederick T. Frelinghuysen,

Secretary of State

Washington, D.C.

Sir:

Referring to my No. 1739 of date the 4th of September last with which I had the honor to transmit a report of the tea production of Japan together with a copy of the note of Mr. Inouye on the subject wherein the Minister said that he had been "informed that approximately the "quantity of tea produced in this "country during the 14th year of "Meiji (1881) was 35,007,241 Kin equal to 46,676,321 lbs - I now beg leave to enclose for your information a

paper

paper on the preparation of Japan Tea published in the Transactions of the Asiatic Society of Japan no November last, to which, you will please observe, is an appendix (pp. 21-23) wherein it is stated upon the authority of the Reports of the Chamber of Commerce in Yokohama and Kobe that the Export of Japan Tea from the ports of Nagasaki Kobe and Yokohama in 1880-81 amounted to 42,000,000 lbs and in 1881-82 to 36,250,000 lbs in round numbers, and also states the annual export of Tea from said ports for twenty years. This paper is not without interest on the subject of the preparation of Tea in Japan.

I have the honor to be, Sir,

Your obedient servant

M. A Knighton

Enclosure The preparation of Japan Tea by Henry Gribble Duplicate copies.

DEPARTMENT OF STATE
MAR 31 1884
RECEIVED.

relating

No. 1809. Vacates of 4 and of 7 Oct. 1881

United States Legation

Tokei, Japan. 20th. Feby 1884.

Mr. Bingham

To the Secretary of State

Subject.

The Memorandum of Earl Granville, dated Dec. 11th 1883 addressed to the Japanese Government in reply to the propositions for the revision of Treaties.

Mr. Bingham states his views of the Memorandum and considers it a substantial refusal on the part of Great Britain to consent to a revision of the Treaties

on

on the basis proposed by Japan.

Confidential.

No. 1809. U. S. Legation

Tokei, Japan 20th Feby 1884.

Hon. Frederick T. Frelinghuysen.

Secretary of State,

Washington. D. C.

Sir:

I have received in strict confidence with leave to communicate the same confidentially to our Government a copy of the Memorandum of Earl Granville, Her Britannic Majesty's principal Minister for Foreign Affairs addressed to the Japanese Government on the subject of Treaty revision with Japan, which copy of said Memorandum reads as follows:

"Her

"Her Majesty's government are
" willing to agree to an increase
" of the Customs duties, out of
" deference to the strongly expressed
" wish of the Japanese government,
" and in reliance upon their
" assurances that the additional
" revenue thus obtained will be
" applied, in the first instance,
" to placing the currency on a
" more satisfactory footing.
" They will accept in principle
" the Revised Tariff proposed in
" the Conference, subject to any
" further modifications of detail
" that may be found necessary,
" on the condition that Japan
" will agree to give to foreigners
" such extended freedom of

Communication

" Communication with dealers
" in the interior as may protect
" them from combinations injurious
" to foreign trade.

" Her Majesty's government are
" willing to accede to the proposal
" of Japan, that the Tariff question
" should be settled as soon as
" possible, without waiting for
" an agreement upon the other
" points discussed in the Conference.

" They will therefore be prepared
" to authorize Her Majesty's Representative
" to conclude at once a Convention
" to the above effect.

" Her Majesty's Government
" recognize that the throwing
" open of the whole Empire of Japan
" to foreign Commerce, travel,

and

" and residence, with the right of
" holding real property there, on
" terms previously agreed upon
" with the foreign Powers, would
" justify Japan in claiming to
" be admitted to the enjoyment
" of Tariff autonomy, and they
" would therefore be prepared, if
" other Powers also consent, to
" admit a clause in the Revised
" Tariff Treaty, stipulating that
" after a term of years, to be fixed,
" (say, ten or twelve) from the date
" of ratification, either of the
" Contracting Parties should be free
" to give twelve months' notice of
" termination, it being understood
" that, in the absence of any
" notice, the Treaty should continue

" in

" inforce until twelve months after
" such notice has been given;
" provided, however, that, before
" Japan can exercise this right of
" giving notice of termination of the
" Tariff Treaty, she shall already
" have thrown open for a certain
" period (say three years) the
" whole Empire to foreigners, under
" arrangements which the Powers
" shall have accepted, and shall
" have found to work satisfactorily.
" Her Majesty's government trust
" that the Japanese Government
" will appreciate the friendly
" spirit which dictates these
" concessions and that they
" will in return at once do
" what is possible to facilitate
" greater

"greater intercourse between
"foreigners and Japanese. With
"this view they would ask the
"Japanese Government to give
"greater extension to the Passport
"system, and to allow foreign
"vessels to carry cargoes between
"ports not at present open to foreign
"trade.

"With reference to the proposals
"laid before the Conference by
"Japan for the establishment of
"Courts with foreign Judges having
"jurisdiction over foreigners, with
"a view to the eventual abolition
"of Consular jurisdiction, Her
"Majesty's Government have every
"desire to meet in a friendly
"spirit the views and wishes

"of the Japanese Government;
" but they do not see their way
" to expressing an opinion on these
" proposals until the new Laws
" and Rules of Procedure for the
" proposed Courts have been
" completed and translated.

" Her Majesty's Government are
" not disposed to agree to any
" modification of the XXIII Article
" of their Treaty with Japan
" relating to most-favoured-nation
" treatment.

" With regard to the Custom-
-house and Trade Regulations, the
" question of bonded warehouses
" and drawbacks, harbour and
" light dues, Her Majesty's Govern-
-ment consider that they should

" be

"be referred to a Committee of
" Japanese and foreign Delegates
" for as early arrangement as
" possible.

" The question of the protection
" to be given to foreign Trade-marks,
" patents, and inventions should
" also be dealt with at an early
" date. Foreign Office. December 11. 1883."

Inasmuch as this Memorandum bears date the 11th of December last, it is presumable that President Arthur's Statement in his Message of December last to the Congress that the Government of the United States is disposed to concede the requests of Japan to determine its own Tariff duties, to provide such proper judicial tribunals as may

Commend

consumed themselves to the Western Powers for the trial of causes to which foreigners are parties and to assimilate the terms and duration of its Treaties to those of other civilized States; - had reached the British Government by telegram before this Memorandum of the 11th of December last was written!

You will please note that this Memorandum embodies that which was transmitted to you by His Excellency, Mr. West with his letter of the 28th of April but with however certain additions and qualifications.

It is to be observed that in the Memorandum of the 11th of December the following declaration

found

found in the Memorandum
transmitted by Mr. West is
omitted to wit "Her Majesty's
"Government cannot assent to the
"proposal of the Japanese govern-
"-ment that a clause should be
"inserted in the Revised Treaties
"providing for their expiration
"at a given period "×××× "they
"have no intention of surrender-
"-ing the permanent character
"of their Treaties with Japan."
By the Memorandum of the 11th
of December this government is
informed that Her Majesty's —
Government will consent at once
to a revised Tariff Treaty
stipulating therein that after
a term of years (say ten or

twelve

twelve years,) from its ratification, either party may give twelve months notice of the termination thereof, but that the Treaty is to continue in force for twelve months after such notice, — provided however that before Japan can have this right of giving notice of the termination of the Tariff Treaty she shall already have thrown open for a certain period (say three years) the whole Empire to foreigners under the arrangements which the Powers shall have accepted and shall have found to work satisfactorily! Was ever a more artful project than this formulated for the control by a foreign

State

state of the inherent rights
of a free people.[2] Great Britain
will at once make a Tariff &
Treaty as proposed with a
schedule of duties and a free
list as prescribed in the
conference by the British
Minister to be concluded however
subject to the condition that it
shall remain in force 10 or 12
years and be terminated &
thereafter only on twelve months
notice given by either party and
after Japan shall have for
three years opened to foreigners
her whole Empire under &
arrangements which the Powers
each and all shall have
accepted. " "

accepted and shall have found
to work satisfactorily! Japan
as a condition for the proposed
Tariff revision, is to open her
Empire to foreigners who are
subjects of a government which
officially proclaims that Japan
can not impose the obligations
of law upon any subjects of
the Foreign Powers and especially
the subjects of Great Britain!
That is to say Great Britain will
graciously revise the Tariff on
condition that the same shall
be in force 10 or 12 years and
after the whole Empire shall
have been opened and kept
open at least three years for
foreigners to possess themselves of
the

the country and thereafter until each of the foreign Powers shall have accepted the arrangements for the opening of the Empire to foreign possession and foreign control and also until each of the Powers shall have found the arrangements to work satisfactorily! These conditions seem in simple truth to indicate a purpose on the part of Great Britain to convert Japan into a mere dependency and to commit Japan if possible, to the proposition that she cannot rightfully revise the existing Treaties with the United States or any other Treaty Power separately, but may only revise through the joint cooperation

of

of all the Powers and on the terms stated in Earl Granville's Memorandum as herein set forth. The entire project thus presented by Earl Granville is so unjust and so absolutely in conflict with all that this Government has asked for in the Protocols of 1882 and so directly at variance with the views of our Government as expressed in your instructions to me and also as expressed in the President's Message to Congress, dated the 3d of Dec. last, that I sincerely trust that Japan will at once reject the project of Great Britain and assert her undoubted right to conclude

separate

separate Treaties with the United States and each of the other Powers regardless of the views or purposes of Great Britain as expressed or implied in the Memorandum Whatever may come of this latest attempt of Great Britain to indefinitely restrict Japan in her commercial affairs and to deny her general and essential rights of sovereignty, I cannot believe that many of the other Powers will cooperate in so unreasonable a project or that it will find favor with our government.

In your No. 749 with which you transmitted Mr. West's note of the 28th of April last with its

its accompanying Memorandum
permit me to observe that you
were pleased to say that "as
" soon as the matter is finally
" determined" I should "be furnished
" with a copy of the reply to
" Mr. West's note to complete the
" record on the subject".

I have the honor to be.

Sir,

Your obedient servant,

Wm. A. Bingham

Ack by no to file

DEPARTMENT OF STATE
MAR 31 1884
RECEIVED.

Writing

No. 1810.

United States Legation.

Tokei, Japan, 21st Feby, 1884.

Mr. Bingham

To the Secretary of State.

Subject

The Japan Daily Herald on the Presidents Message of December 3rd 1883.

Mr. Bingham states his views upon the article.

No. 1810. United States Legation

Tokei Japan, 21st Feby 1884.

Hon. Fred'k T. Frelinghuysen

Secretary of State

Washington, D.C.

Sir:

The Japan Herald of the 14th ultimo denounced in its usual truculent spirit, that part of the Presidents Message of December last which gives expression to the views of our Government touching the question of Treaty revision with Japan. I have the honor to enclose a copy of the Herald's article.

You will observe the Editor declares that "if the U.S. Government "had been better advised it would "never

"never have attempted to sever
"itself in its Eastern policy from
"that of European Powers."
We are to infer from this that
if our Government had been
better advised it would in past-
years have joined one of the
European States in breaking, by
force of a man-of-war, the Japanese
Quarantine against vessels infected
with Asiatic Cholera and would also have
united with another European
State in officially proclaiming
that the Imperial proclamation
of this Government for the prevention
of the importation into Japan of
Asiatic Cholera might be
disregarded by its Consuls and
should not in any event be
observed

observed by them for the time
limited by the laws of this Empire
for the Quarantine of infected
vessels; and above all that our
Government should have followed
the published resolve of the Board
of Consuls at Yokohama not to
allow the enforcement of the
quarantine against any foreign
vessel save at the Elections and
upon the order of the Consul Repre-
senting the nationality of the infected
vessel. Another grievance of the Editor
is the Commercial Treaty Concluded
by the United States in 1878 with
Japan wherein our Government
conceded the right of Japan "to
"regulate its own tariff". As to
the allusion made to myself in
this

this article, I beg leave to say that it gives me much joy to know that no agency has influenced me to insist upon a European Policy in Japan or elsewhere which looks to the persistent denial of a peoples rights under false pretenses, and with a view to the ultimate reduction of independent States to mere dependencies. I prefer to walk in the old ways of our Government whose policy is, and has been, Justice to all Nations, entangling alliances with none.

I have the honor to be,

Sir

Your Obedient Servant,

Wm. A. Bingham

Enclosure

Enclosure -

Extract from the Japan Daily Herald of date January 14th 1884.

Enclosure No 1 with Mr. Bingham's No 1810.

The Japan Daily Herald.

MONDAY, 14th JANUARY, 1884.

In the President's message to Congress, we notice the following paragraph having reference to Japan :—"The question of the general revision of the foreign treaties of Japan has been considered in an International Conference held at Tokio, but without definite result, as yet. This Government is disposed to concede the requests of Japan to determine its own tariff duties, and provide such proper judicial tribunals as may commend themselves to the Western Powers for the trial of causes to which foreigners are parties, and to assimilate the terms and duration of its treaties to those of other civilized States."

Had the U. S. Government been better advised, it would never have attempted to sever itself in its Eastern policy from that of European Powers. In its abortive and secret treaty with Japan, some years ago, it made the concession to Japan of fixing its own tariff; and it now adds that it is willing, the President says, "to assimilate the terms and duration of its treaties to those of other civilized states." The employment of the word "other" shews how ill-informed the President is, of the real condition of the Japanese Government and people. From the befogged condition which the President's mind appears to be in, Japan and "other" civilized states are assumed by him to have the same status. It is a pity that President Arthur has not been kept better posted with respect to the "true inwardness" of Japan. On the subject of the provision of proper judicial tribunals, we find that the U. S. Government is willing to concede the request of the Japanese Government, "provided such tribunals commend themselves to the Western Powers," for the trial of causes in which foreigners are parties. Fortunately the Representatives of the other Western Powers have not the same motive for seeing things from the same point of view that the American Representative here has, and what may suit him, and owing to his representations, his Government, will not be likely to commend itself to their approbation.

Ack & file

missing

No. 1811.

United States Legation

Tokei Japan, 21st Feby, 1884.

Mr. Bingham

To the Secretary of State.

Subject.

The new Conscription Regulations

No. 1811. United States Legation.

Tokei Japan 21st Feby. 1884.

Hon. Frederick T. Frelinghuysen,

Secretary of State

Washington, D.C.

Sir:

Having with my No 1010 of date the 11th of November 1879 transmitted to the Department the Conscription Act of this Government, which act was published ~~in~~ ~~in~~, with my note in the Foreign Relations for 1880 pp. 669-676, I now have the honor to enclose herewith, for your information, a printed copy of the official Revision thereof, as promulgated by the Imperial Government of Japan, on the 28th of December last, and published in the Japan Weekly Mail of the 9th instant;

and

and also the very interesting review thereof as published in the same issue of that Journal.

You will note that the present Standing Army of Japan, exclusive of the Guards, is said to consist nominally of 40,343 men of all arms, and actually of about 38,000 men. This paper after detailing the compositions of the various arms of the present Military Service of the Empire, sets out the changes provided for by the revised Act, which partitions the Empire into seven Military divisions, and declares every male subject therein between the ages of 17 and 40 years to be liable to Military service. The article also gives statistics of the pay and subsistence per annum of the army. I have the honor to be, Sir,

Your obedient servant.

Wm. A. Bingham

Enclosure Extract from Japan Weekly Mail Feb 1st 1890.

Enclosure No 1 with Mr. Brugham's No 1811.

The Japan Weekly Mail.

YOKOHAMA: SATURDAY, FEBRUARY 9TH, 1884.

THE NEW CONSCRIPTION REGULATIONS.

SINCE the Autumn of 1882, it has been generally understood that Japan finds herself in view of some contingency demanding increased armaments. What that contingency is, public opinion does not pretend to doubt. The mood which China has displayed towards this country, on more than one occasion, shows plainly enough that peace and good fellowship are not paramount objects with the Cabinet at Peking. One instance alone suffices to establish this fact. In 1880, China had an opportunity of definitely closing the Riukiu account on terms proposed by herself and embodied by her own plenipotentiaries in a Convention which had received Japan's assent. But in the interval between the drafting and the signature of this document, the Middle Kingdom emerged from the shadow of a Russian invasion; and, being no longer under the necessity of circumspection, the Emperor's advisers did not hesitate to choose an open breach of faith rather than reconciliation with Japan. A moderately prudent government could not close its eyes to the significance of that election. It is quite certain that the sentiments of this empire towards its neighbour would not be satisfied by the commonplace conditions of international amity. No bond of fellowship with China could be too close for Japan's wishes, provided it did not involve any return to the conservative route from which the former seems so firmly resolved not to wander. But unfortunately this goodwill does not appear to be reci-

procal. Whether China's mood is one of active hostility or aimless umbrage, it is a mood which Japan thinks she cannot afford to ignore, and we do not imagine that any European State similarly circumstanced would be more careless.

These things are, of course, matters of conjecture. We do not profess to interpret the exact motives which impel Japan to embark in a policy that has proved, and is proving, so ruinous to Western prosperity. But from whatever direction, other than that of China, we consider her position, no necessity for military preparation is discernible, and the plain inference is that her neighbour's disposition alone prompts her to get ready for emergencies. It has been urged that no country in the world has less reason to fear aggression than Japan; that her tranquillity is doubly assured by the goodwill she has earned, and by the concensus of Powers which have a common interest in her welfare. Considerations of this nature, unfortunately, do not receive practical recognition at the hands of any State to-day. The world has evidently made up its mind that nothing is strong but strength, and that to be prepared for war is the only way to avoid it. We cannot be surprised if Japan subscribes to this universal doctrine, however we may question her wisdom, or regret her resolve.

At present the standing army, exclusive of the Guards, consists nominally of 40,432 of all arms. The force actually with the Colours is about 2,000 short of this total. It is distributed into six divisions, which have their head-quarters at Tokiyo, Sendai, Nagoya, Osaka, Hiroshima, and Kumamoto, as shown in the following table:—

	Men.	Total Strength.
First Territorial Division (*Dai-ichi Gunkwan*).		
Tokiyo Garrison (Tokiyo *Chintai*)	3,510	
Sakura Corps (Sakura *Yeisho*)	2,346	8,202
Takasaki Corps (Takasaki *Yeisho*)	2,346	
Second Territorial Division (*Dai-ni Gunkwan*).		
Sendai Garrison	3,832	6,178
Awomori Corps	2,346	
Third Territorial Division (*Dai-san Gunkwan*).		
Nagoya Garrison	2,891	5,237
Kanazawa Corps	2,346	
Fourth Territorial Division (*Dai-go Gunkwan*).		
Osaka Garrison	3,351	
Otsu Corps	2,346	8,043
Himeji	2,346	
Fifth Territorial Division (*Dai-shi Gunkwan*).		
Hiroshima Garrison	2,891	5,237
Marugame Corps	2,346	
Sixth Territorial Division (*Dai-roku Gunkwan*.)		
Kumamoto Garrison	3,351	5,697
Kokura Corps	2,346	
Grand Total		38,594

Detail.

Commanding Officers (*Fochōkwan*)	79
Officers (*Shikwan*)	1,366
Non.-Com. Officers (*Kashikwan*)	5,759
Privates (*Hei*)	31,390

On a war footing the above total would be increased to 55,742. To this must be added the Corps of Imperial Guards, whose total strength, on a peace and a war footing alike, is 3,994 of all ranks. The following table shows the composition and force of the Standing Army according to the system inaugurated in 1875:—

Standing Army.

Arm of Service.	Number of Organizations.	Number of Men. Peace Footing	War Footing	Peace Footing	War Footing
Infantry	14 Regiments or 42 Battalions	779	1,099	32,858	46,298
Cavalry	2 Regiments	159	189	318	378
Artillery	15 Brigades or 30 Companies	306	386	4,590	5,790
Engineers	14 Companies	154	189	2,156	2,646
Control	6 Companies	85	105	510	630
Corps of Imperial Guards (as detailed elsewere)		3,994		3,994	
Grand Total				44,426	59,736

It is not accurately known to what extent these numbers will be increased by the new system. Information upon this point is carefully withheld for the present. Rumour states the proposed changes as follows:—

Increase During the Year

1883.	1884.	1885.	1886.	1887.
		Tokiyo Division.		
1 Company	3 Battalions	2 Companies	3 Battalions	.....
		Osaka Division.		
1 Company	3 Battalions	2 Companies	.....	.....
		Hiroshima Division.		
2 Companies	.....	4 Battalions	.....	5 Battalions
		Kumamoto Division.		
2 Companies	.....	4 Battalions	2 Companies	5 Battalions
		Sendai Division.		
.....	1 Company	2 Companies	.....	.....
		Nagoya Division.		
.....	1 Company	2 Battalions	3 Battalions	.....

Total increase—32 Battalions and 16 Companies, or 36 Battalions in all.

Assuming this estimate to be correct, though, for the moment, it can only be regarded as an approximation, we may say that the effect of the new system will be to increase the Standing Army by six-sevenths of its present strength; and that, by the end of 1887, its peace and war establishments will be 82,506 and 110,938 respectively.

Before proceeding to consider the new system, it may be well to complete this part of our subject by detailing the composition of the various arms of the service:

Composition of a Battalion of Infantry (*Dai-tai*), on a Peace Footing.

Commanding Officer	1	779 of all ranks; and 3 horses.
Officers	21	
Non.-Com. Officers	115	
Privates	640	
Non.-Combatant Officers	2	

Composition of a Company of Infantry (*Chintai*), four of which go to a Battalion.

Officers	5	192 of all ranks.
Non.-Com. Officers	27	
Privates	160	

Composition of a Regiment of Infantry (*Ren-tai*), consisting of Three Battalions.

Commanding Officers	4	2,347 of all ranks; and 12 horses.
Officers	65	
Non.-Com. Officers	349	
Privates	1,920	
Non-Combatant Officers	9	

On a War footing each Company is increased by eighty privates of the First Class, making the total number of privates in a Battalion 960, and in a Regiment, 2,880.

Composition of a Battalion of Cavalry on a Peace Footing.

Officers	5	159 of all ranks; and 135 horses.
Non.-Com. Officers	31	
Troopers	120	
Non-Combatant Officers	3	

On a War footing the number of Troopers is increased to 150, making the strength of the Battalion 189 men, and 170 horses.

Composition of a Brigade of Mountain Artillery (*Sampō-tai*), on a Peace Footing, consisting of Two Companies.

Commanding Officer	1	306 of all ranks; and 104 horses.
Officers	11	
Non.-Com. Officers	51	
Gunners	240	
Non-Combatant Officers	3	

On a War footing the number of Gunners is increased to 320, making the total of all ranks 386, and 238 horses.

COMPOSITION OF A COMPANY OF ARTILLERY (Field or Mountain) ON A PEACE FOOTING.

				TOTAL.
Officers	Active 4, Reserve 1	5		
Non.-Com. Officers	Active 13, Reserve 10	23	Active 68, Reserve 80	148
Gunners	Active 51, Reserve 69	120		

COMPOSITION OF A BRIGADE OF FIELD ARTILLERY (*Yahô-tai*) ON A PEACE FOOTING.

Commanding Officer	1	306 of all ranks; and 180 horses.
Officers	11	
Non.-Com. Officers	51	
Gunners	240	
Non-Combatant Officers	3	

On a War footing the number of Gunners is increased to 260, making the total of all ranks 326, and 258 horses.

COMPOSITION OF A COMPANY OF ENGINEERS ON A PEACE FOOTING.

Officers	5	154 of all ranks; and 20 horses.
Non.-Com. Officers	26	
Privates	120	
Non-Combatant Officers	3	

On a War footing the number of the Non.-Com. Officers is increased by 5, and that of the privates by 30, making 189 of all ranks and 21 horses.

COMPOSITION OF A BATTALION OF CONTROL, OR INTENDANCE (*Shichô-hei*), ON A PEACE FOOTING.

Officers	4	85 of all ranks; and 85 horses.
Non.-Com. Officers	18	
Privates	60	
Non-Combatant Officers	3	

On a War footing the number of the Non.-Com. Officers is increased by 10, and that of the privates by 20, making 105 of all ranks and 106 horses.

COMPOSITION OF THE CORPS OF IMPERIAL GUARDS (*Konoye-tai*), WHETHER ON A PEACE OR A WAR FOOTING.

		OF ALL RANKS.	TOTAL.
Infantry	Two Regiments	3,262	3,994
Cavalry	One Battalion	189	
Artillery	One Brigade	326	
Engineers	One Company	184	
Non-Combatants		33	

The above total includes :—

Commanding Officers	9
Officers	128
Non.-Com. Officers	576
Privates	3,248
Non-Combatants	33

By the new law the whole country is parcelled out, for purposes of conscription and mobilization, into seven Military Divisions. Of these the seventh is not yet completely included in the scheme, but the first six are formed into twelve Districts, and these, again, into 185 Sections. The following table gives a geographical idea of this part of the system :—

	FIRST DIVISION.
1st District	33 Sections, in the province of Musashi; and the provinces of Sagami, Kai, Idzu, and Kotsuke.
2nd District	9 Sections, in the province of Shinano; 6 in Musashi; and the provinces of Awa, Kadzusa, Shimosa, Hitachi, and Shimotsuke.
	SECOND DIVISION.
3rd District	3 Sections, in the province of Rikuzen; the provinces of Iwaki, Iwashiro, Uzen, Yechigo, and the island of Sado.
4th District	12 Sections, in the province of Rikuzen; and the provinces of Rikuchiu, Mutsu, and Ugo.
	THIRD DIVISION.
5th District	7 Sections, in the province of Owari; 7 in Shinano; and the provinces of Mikawa, Totomi, Suruga, Isé, and Shima.
6th District	2 Sections, in the province of Kai; 3 in Owari; and the provinces of Mino, Kaga, Noto, Yetchiu, Hida, and Yechizen.
	FOURTH DIVISION.
7th District	6 Sections, in the province of Setsu; 9 in Kai; and the provinces of Yamashiro, Yamato, Mikawa, Idzumi, Omi, and Iga.
8th District	11 Sections, in the province of Setsu; and the provinces of Harima, Awaji, Wakasa, Tamba, Tango, Tajima, Mimasaku, Bizen, Hoki, and Inaba.
	FIFTH DIVISION.
9th District	The provinces of Aki, Bingo, Bitchiu, Idzumo, Iwami, Oki, Suwo, and Nagato.
10th District	The provinces of Awa, Sanuki, Iyo, and Toki.
	SIXTH DIVISION.
11th District	The provinces of Higo, Hiuga, Osumi, Satsuma, and Okinawa.
12th District	The provinces of Buzen, Bungo, Chikuzen, Chikugo, Hizen, Iki, and Tsushima.
	SEVENTH DIVISION.
Oshima, Shiribeshi, Ishikari, Teshima, Kitami, Iburi, Hidaka, Togachi, Kushiro, Nemuro, and Chishima.	

NOTE.—The Seventh Division, or Hokkaido district, is placed, for the present, under the military administration of the Second Division. Conscription, however, will be carried on in Hakodate, Yesashi, and Fukushima only.

Throughout these Divisions every male, between the ages of 17 and 40, is liable to service. The military force of the Empire is divided into the Standing Army, the Reserve Army, and the Territorial Army. Youths are not enrolled for service with the Standing Army, except at their own request, before the age of twenty. Up to that age they are included in the Territorial Army. The periods of service are as follows :—

Three years with the Colours.
Four years with the Reserve of the Standing Army.
Five years with the Reserve Army.
Eleven years with the Territorial Army.

It will be seen that Japan, following France's example, and shunning the error into which England has fallen, does not commence the active training of her conscripts before they attain the age of twenty. On the other hand, she holds with Germany, and against France, that it is possible to make a soldier in three years. This we believe to be an error. The German cannot safely be taken as a type. His early inculcated habits of restraint and national spirit of obedience are exceptional elements in his favour. Judging from the evidences that have been before us since Japan's army was formed on an European model, we are inclined to regard five years as a minimum period of service with the Colours. There is much to be mended in her military practice. Her men are badly set up, and betray, to a considerable extent, that *abandon* and slovenliness which were once admired in the French army, but which are now acknowledged to be quite inconsistent with the individuality required by recent modifications in tactics. Rigid discipline and steadiness in the ranks are more than ever needed in the battles of to-day, and military critics have observed with regret an apparent lack of these qualities in the Japanese soldier. Of recent years, indeed, great improvement in these respects has been noticeable, but we doubt very much whether the peculiar habits of life of a Japanese youth permit a fair hope that he can be licked into serviceable soldier-like shape in three years.

The Reserves of the Standing Army and the Reserve Army are to be called out once a year for a period of not more than sixty days; but the Territorial Army will only be called out in time of war or other emergency. Thus the total period of liability to service may be reckoned as twelve years, during nine of which the conscript is only required to serve two months annually.

Statistics show that the number of youths annually arriving at the age for conscription throughout the Empire is 210,000, approximately; and it is calculated that this total will be reduced by about two-thirds, owing to the working of the scheme of exemptions. There will thus come forward every year, to be passed through the ranks, seventy thousand conscripts. It is obvious that such a number could not possibly be absorbed by an army of eighty-two thousand men. Indeed this problem of keeping the Army with the Colours at its fixed maximum, and at the same time imparting military instruction to the whole body of non-exempted conscripts, is one of the most puzzling that present themselves in connection with compulsory service. Japan has met the difficulty after a novel fashion. In addition to the Standing, Reserve, and Territorial, Armies, she is to have a force of Supernumeraries numbering not less than two-fifths of the Army with the Colours. Casual vacancies occurring in the ranks of the Army with the Colours are to be filled up from the Supernumeraries, and, at the end of a year, such of the latter as have not been drafted into the former, are passed into the Reserves of the Standing Army. A simple arithmetical calculation, therefore, shows that the least number of conscripts annually required will be eleven-fifteenths of eighty-two thousand (assuming the latter number as the strength of the Army with the Colours), that is to say, about sixty-one thousand. The seventy thousand conscripts yearly coming forward are thus disposed of, as the strength of the Supernumerary corps is elastic, its minimum only being fixed.

The scheme of exemptions (enumerated in the Conscription Regulations, of which a translation is appended) is very accurate and comprehensive. The hatred with which compulsory service is regarded by every people in the universe, has always been intensified in the direct proportion of the number of exemptions. In the great military nations of Europe, where exemptions reach to forty, and sometimes fifty, per cent. of the conscripts, mothers have been known to thank God for inflicting on their sons a deformity incapacitating them for military service. Japan is badly circumstanced in this respect. The comparatively small numbers of her Standing Army oblige her to extend her system of exemptions so as to embrace 66 per cent. of those liable to conscription, and we may expect that military service will be correspondingly unpopular. Of the exemptions themselves, the only one that seems open to criticism, from a general point of view, is the privilege accorded to students at public, that is to say Government, schools and colleges. The consequence of this exemption will probably be disastrous to private educational enterprise. If will be observed (*vide* Article 11) that special facilities are offered to persons who possess certificates

No. 1812. United States Legation

Tokei, Japan, 22 Feby 1884.

Hon. Fredk T. Frelinghuysen;

Secretary of State

Washington D.C.

Sir:

Complications recently arose between Japan and China touching the Treaty rights of the former over the persons of Chinese subjects resident in Japan in relation to which I am pleased to say an amicable settlement is assured. Doubts having been entertained as to the intent and meaning of certain Articles of the existing Treaty between the two Powers a re-translation of the Chinese Text, a revision of the former translation of Mr. Meyers, has been

made

made by Mr. F. M. Eastlake and published in the Japan Gazette of the 16th inst, a copy of which translation as therein published I have the honor to enclose for your information.

I have the honor to be,

Sir

Your obedient servant.

Jno. A. Bingham

Enclosure.

Translation of Treaty between China and Japan of 1871. from Japan Gazette Feby 16th 1884.

Enclosure with Mr. Bingham's No. 1812.

Japan Gazette July 16th 1884

TREATY OF PEACE, COMMERCE, AND NAVIGATION BETWEEN THE EMPIRES OF CHINA AND JAPAN.

SIGNED IN THE CHINESE & JAPANESE LANGUAGES, AT TIENTSIN, 13TH SEPTEMBER, 1871.

RATIFIED BY THE EMPEROR OF CHINA, SEPTEMBER, 1871.

RATIFIED BY THE MIKADO OF JAPAN, WITH MODIFICATIONS, 1ST NOVEMBER, 1871.

Retranslated from the Chinese Text, and Revised from the Translation of W. F. Mayers, by F. W. Eastlake (1).

The Empire of China and the Empire of Japan having been on terms of friendship for many years, now mutually desire to renew their oldtime friendship, and to make the intercourse existing between the two countries more intimate.

To this end Li, by imperial appointment, Minister Plenipotentiary of the Empire of China for the management of commercial affairs, Senior Guardian of the heir apparent, Assistant Grand Secretary, President of the Board of War, Governor-General of the Province of Chih-li, and invested with the first degree of the third order of nobility; and Ito, Minister Plenipotentiary of the Empire of Japan, etc., etc.; each acting in obedience to the instructions of their respective sovereigns, have conferred together, and mutually subscribed to articles for the renewal of friendly relations; to the end that they may be observed with good faith on both sides in perpetuity.

The articles agreed upon are as follow:—

Art. I.—Friendly relations shall henceforth be maintained in redoubled force between China and Japan, as boundless in measure as are the heavens and the earth. In all matters pertaining to the dependencies(2) of either country, the two governments shall treat each other with due decorum, and not in the least degree attempt forcible entrance or annexation,(3) so that the peace between them may evermore be unbroken.

Art. II.(4)—Friendly intercourse thus existing between the two governments, it is the duty of each to take an interest in the concerns of the other, and in the event of any other nation acting unjustly towards or treating either of the two powers with contempt, so soon as notice is given (by the one to the other) mutual assistance must be rendered, or mediation offered for the arrangement of the difficulty, in the interests of international peace.

Art. III.—The system of government and the legal enactments of the two powers being in many respects different(5) from each other, each country shall be allowed to act with entire independence. Neither government shall take upon itself to act for the other, nor shall any attempt be made to depart from the statutes of either country. Each shall aid the other in the enforcement of laws, nor shall either allow its subjects to entice the people of the other country to commit acts in violation of the laws.

Art. IV.—Each government shall have the right to send ministers plenipotentiary, with their families and suites, to reside in the capital of the other, either permanently or at recurrent periods. Their travelling expenses, incurred while passing through the country, shall be defrayed by themselves. In the matter of their hiring ground or buildings to serve as legations; of the passage of their baggage to and fro; of the conveyance of their correspondence by special couriers, and the like, the proper authorities shall see that due assistance is rendered on either side.

Art. V.—Although the functionaries of the two governments have fixed grades, the nature of the offices conferred are different on either side. Officials of equivalent rank will meet and communicate with each other on a footing of equality. When an official visits a superior the intercourse between them shall be regulated by the courtesy shown to a guest. For the transaction of government business, the officials of the two countries shall address communications to officers of their own rank, who will transfer such communications to their superiors. They must not directly address a superior in rank. In visits, cards with the official title of the visitor shall be sent on either side. All officials sent for the first time from one government to the other shall present their credentials bearing an official stamp for inspection, in order to guard against false personation.

Art. VI.—In official correspondence, China will use the Chinese language, and Japan will either use the Japanese language accompanied by a Chinese version, or a Chinese version alone, as may be found most expedient.

Art. VII.—Friendly intercourse having been established between the two Governments, it will behove them both to appoint certain ports on the seaboard, where their merchants will be allowed to come and go for the purposes of trade, and to lay down special(6) regulations of trade, by which the merchants of the two countries may abide in perpetuity.

Art. VIII.—At the ports appointed in the territory of either government the other shall have the right to station consuls for the purpose of superintending and controlling its own mercantile communities. All suits in which they (the consul's nationals) are the only parties, the matter in dispute relating to money or property,(7) it will fall to the consul to adjudicate according to the law of his own country. In mixed suits, the plaint having

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(1) *Translator's Note.* Mayers' valuable *Handbook of the Treaties* has been so long before the public that it needs no word of commendation here. The late W. F. Mayers was a Chinese scholar of eminent capabilities, and his translation of the treaty between China and Japan has been generally considered faultless; yet there are some important misconceptions, if not direct errors, in his version, which the present translator has carefully endeavored to correct. In all else Mayers' translation has been followed as closely as possible. The Chinese text of the treaty is more than usually ambiguous, pithy and idiomatic to a degree; so that it is often most difficult to decide upon the exact import of a phrase or paragraph. Wherever this is the case, the translator has appended an explanatory footnote.

(2) Mayers, "territorial possessions;" but the characters employed refer to the dependencies (and tributary states) of the empire, including Corea, the Loochoos, and the like. Chinese 屬邦

(3) 不可稱有侵越

(4) This article was excluded from ratification by the Mikado of Japan, on the ground that it was unnecessary It is, nevertheless, quoted in the latest copies of the treaty printed by the Chinese Government.

(5) 異同 "partly different."

(6) Mayers "separately." The character 另 has here rather the significance of "distinct, special, certain."

(7) Or, "real estate."

been laid before the consul, he will endeavour, in the first instance, to prevent litigation by pacific measures. If, upon trial, this be found impossible, he will write officially to the local authorities, and in concert with them fairly try the case and decide it. Where acts of theft or robbery are committed, and where debtors abscond,(8) the local authorities can do no more than make search for and apprehend the guilty parties. They shall not be held liable for any indemnity.

Art. IX.—At any of the appointed ports where no consul shall have been stationed, the official control and superintendence of the traders resorting thither shall devolve upon the local authorities. In case of the commission of any crime,(9) the authorities shall on the one hand,(10) apprehend the guilty party, and, on the other hand, communicate the particulars of his offence to the consul at the nearest port, by whom he shall be tried and punished (according to the law of his country).

Art. X.—At the ports named in either country, the officials and people of the other shall be at liberty to engage natives for service, or as artisans, or as business managers. The persons so engaged shall be kept in order by the person so engaging them, who shall not at all allow them to commit fraudulent acts. Still less shall he give rise to cause for complaint by giving ear to statements advanced from unscrupulous motives. In the case of any offence being committed by any person employed in the above mentioned manner, the local authorities shall be at liberty to apprehend and punish the offender. The employer shall not seek to favour or protect him.

Art. XI.—Whereas it is the duty of the subjects of either power residing at the ports declared open to live on friendly terms with the native inhabitants, it is provided that they shall not be allowed to wear knives or other weapons. Infraction of this rule will be punishable by a fine, accompanied by official confiscation of the arms.(11) Residents as aforesaid shall attend peaceably to their own avocations, and whether residing permanently or for a short time only at a port, they shall submit to the authority of their consul. They shall not be allowed to adopt the costume of the country in which they may reside, nor to obtain local registration and compete at the literary examinations, lest disorder and confusion arise.

Art. XII.—If a subject of either power, having violated the law of his own country, secrete himself in an official building, merchant vessel, or warehouse of the other country, or escape to any place in the territory of the other, on official information being made by the authority of the state of which such offender is a subject to the authorities of the other, the latter shall immediately take the necessary steps for the arrest of the offender, without show of favour. Whilst in custody or under official supervision he shall be provided with food and clothing, and shall not be subjected to any ill-usage.

Art. XIII.—If a subject of either power associate himself at any of the open ports with lawless offenders for purposes of robbery or other felony,(12) or if any one secretly works his way into the interior and commits acts of incendiarism, murder or robbery, active measures for his apprehension shall be taken by the proper authorities, and notice shall at the same time and with all possible speed(13) be given to the consul of the offender's nationality. In case any offender shall venture, with weapons of a murderous nature, to resist capture, the party making the arrest may draw weapons in self defence, without blame being attached to them; (14) should the affair result in loss of life, the matter shall be investigated at an inquest(15) which will be held by the consul and the local authorities together. In the event of the occurrence taking place in the interior, or so far from the port that the consul cannot arrive in time for the inquest, the local authorities shall despatch a report of the facts of the case to the consul.

When arrested and brought up for trial, the offender, if at an open port, shall be tried by the local authorities and the consul together; if in the interior, he shall be tried and dealt with by the local authorities, who will officially communicate the facts of the case to the consul.

If subjects of either power shall assemble to the number of ten or more to create disorder and commit excesses in the dominions of the other, or shall induce the natives of the country to conspire with them in order to do injury to the other power, upon the circumstances being reported to the local authorities they shall be at liberty to arrest them at once. If at a port, their consul shall be officially informed, in order that he may take part in their trial. If in the interior, the local authorities shall thoroughly investigate the matter,(16) and shall make official communication of the particulars to the consul. In either case capital punishment shall be inflicted at the scene of the commission of the offence.

Art. XIV.—Vessels of war belonging to either power shall be at liberty to frequent the ports of the other for the protection of the subjects of their own country, but they shall in no case enter ports not declared open by treaty, nor rivers, tributary streams, and lakes in the interior. Any vessels infringing

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(8) Mayers' translation has been retained here, although its exactness is questionable. The original meaning of 逋欠 is "moneys owed to government." Perhaps a better translation would be "in suits to recover debts."

(9) *Fan Chi* is rather inadequately translated by 'crime,' but we have no better equivalent. *Wei* 罪 in Art. XIII can also only be rendered with 'crime;' but in Chinese the former phrase implies the act, the latter the *intention* of serious wrong doing.

(10) 一面一面 "at once—and at the same time."

(11) The ratification of the clauses relating to the wearing of arms was refused by the Mikado of Japan; but, as with article II, these clauses still exist in the latest printed copies of the treaty. Whether the Chinese Government regard them as valid or not is difficult to state.

(12) 匪 means "serious wrong doing, crime."

(13) "Flying speed."

(14) This most important clause reads as follows: 均准格殺勿論. which Mayers translates "may be slain in the act without further "consequences." 格殺 it is true, is equivalent to "homicide," "manslaughter," but here as elsewhere the Chinese characters seem to have a peculiar, if not somewhat unusual, significance. It may as well be remarked that the opinion of Chinese officials, from the Pekin authorities downwards, is averse to the phrase as rendered in Mayers' version. A perfectly literal translation would be quite unintelligible.

(15) We have an ambiguous character here again; 驗 primarily denotes "investigation," "official examination," and then "to hold an inquest." The latter phrase is more frequently rendered by 驗尸.

(16) 由地方官審實.

this rule shall be detained, and steps taken to enforce a fine. This stipulation shall not, however, apply to vessels driven into port by stress of weather.

Art. XV.—If either of the two states should be involved in war with any other power, measures for the defence of the coast being thereby entailed, trade should be suspended for the time being, together with the entry and departure of ships, lest injury befall them. Japanese subjects ordinarily established in the appointed ports of China, or in places adjoining Chinese waters,(17) and Chinese subjects ordinarily established at the open ports of Japan, or in places near Japanese waters, shall not be permitted to engage in strife with the subjects of a hostile power, or to attack or plunder them.

Art. XVI.—No consul of either power shall be allowed to engage in mercantile transactions, or to act as a consul for a power not in treaty relations with the other. In the case of any consul acting so as to render himself generally unacceptable, on substantial proof to this effect being produced, it shall be competent for the government interested to communicate with the minister plenipotentiary, who, after conscientious investigation, shall recall the consul,(18) in order that the friendly relations of the two governments may not suffer detriment through the misconduct of a single individual.

Art. XVII.—The flags carried by the vessels of either country are of a fixed design. If a vessel of either power, having assumed the colours of the other, secretly do that which is contrary to law, the vessel and its cargo shall be confiscated by the government whose colours have been assumed; and if it appear that the false colours were given by an official, he shall at once be denounced and dismissed from his post. The subjects of either country shall be at liberty to purchase the books of the other, if desirous of studying its literature.

Art. XVIII.—The foregoing articles are agreed to by the two contracting powers in order to prevent unexpected misunderstandings, to the end that perfect confidence and improved relations may exist between them. In testimony whereof the ministers plenipotentiary of the two contracting powers do now accordingly sign and affix their seals hereto. So soon as the present treaty shall have been ratified (19) by their respective sovereigns, and ratified copies of it exchanged, it shall be printed and published, and circulated throughout the dominions of either power, for the information of the officials and people of both countries, to the end that they shall both understand and abide thereby for evermore.

Dated the 29th day of the 7th moon of the 10th year of Tung Chi, corresponding to the 4th year of Meiji according to the Japanese calendar (September 13th, 1871.)

(Signed) LI HUNG-CHANG, [L. S.]
" ITA, [L. S.]

(17) 隣近洋面.
(18) 查明撤回.
(19) Literally "signed by the imperial pen."

Copy to Treasury April 2, 1884 Circular.

DEPARTMENT OF STATE
MAR 31 1884
RECEIVED.

Mr Wing

No. 1813.

United States Legation,
Tokei, Japan, 23rd Feby 1884.

Mr. Bingham
To the Secretary of State

Subject:
Monthly Returns of the Foreign Trade of Japan for December 1883.

Copied for Bureau of Statistics.

No. 1813. United States Legation.

Tokei, Japan, 23rd Feby. 1884.

Hon. Fredk T. Frelinghuysen,

Secretary of State

Washington, D.C.

Sir:

Herewith I have the honor to enclose for your information and for the information of the Honorable Secretary of the Treasury, triplicate copies of the Monthly return of the "foreign trade of the Empire of Japan "for the month of December 1883"

The tables on page 1 shew that the value of commodities exported within the month was Yen 3,416,753 00/100, and that the value of commodities imported within the month was Yen 1,966,501 00/100

the

the value of the exports being in excess of the value of the imports for the month, Yen 1,450,252 $\frac{00}{100}$.

By table 2 of the Report it appears that the Import duties for the month was Yen 108,959 $\frac{00}{100}$.

By Table 4 the value of Specie and bullion exported within the month was Yen 239,256 $\frac{41}{100}$ and that the value there of imported within the month amounted to Yen 365,032.

I have the honor to be,

Sir,

Your obedient Servant

M. W. Rinehart

Enclosure.

Triplicate Copies Monthly trade Returns - Japan December 1883. under Separate Cover.

Ack by no 1 File

DEPARTMENT OF STATE
MAR 31 1884
RECEIVED.

(1) Wloing

No. 1814.

United States Legation.

Tokei, Japan, 25th Feby 1884.

Mr. Bingham

To the Secretary of State

Subject-

Germany's recent action in regard to Treaty revision.

No. 1814. United States Legation

Tokei, Japan, Feby 25, 1884.

Hon. Frederick T. Frelinghuysen,

Secretary of State

Washington, D.C.

Sir:

Referring again to the subject of Treaty revision, and to the reply of the foreign States in Treaty relations with Japan, to the propositions of this Government for a general revision, I beg leave to acquaint you that in the "Japan Gazette" of the 13th inst appeared the following telegram:- "Berlin January 3rd, 1884"

"The German Government has forwarded "a favorable reply to the proposal "of the Government of Japan, that the "latter should establish courts of

"justice,

"justice which will have jurisdiction
"over foreigners in that Country, as well
"as natives. It is understood that
"the United States Government has
"given a similar reply to the
"Japanese proposition."

The last sentence of this telegram shews very clearly that the President's Message had reached Berlin on the 3rd of January last, and that the statement of the President therein made of the views of our Government was doubtless the immediate cause of Germany's action in the premises; as I have ventured to say in My No. 1809 it was in my opinion the President's Words which prompted Earl Granville to send his Memorandum to this Government, of date the 11th of

December

December last, a copy of which is enclosed in my No. 1809.

Mr. Inouye having resumed his duties in the Foreign Office, on the 23rd inst. I had an interview with him wherein he said, referring to Earl Granville's propositions in his Memorandum of the 11th of December last, that His Majesty's Government would not revise the Treaty with Great Britain on the basis set forth in that Memorandum, and added, that a Communication has been received from Germany, a copy of which he would confidentially communicate to me as soon as possible after its translation.

The Minister intimated that he did not think Germany would

Concur

" Concur with the propositions of Great Britain.

It is to be hoped that Great Britain will not find much support with the other European States in her new device to control during her pleasure, not only the general interests of Japan, but the general interests as well of all other Powers, in this Empire.

I have the honor to be,

Sir,

Your obedient servant.

H. A. Bringham

DEPARTMENT OF STATE
MAR 31 1884
RECEIVED.

No. 1815.

No. Navy dept. pd April 2
No. Treasury dept. pd April 2. pd circular

United States Legation

Tokei, Japan, 25 Feby 1884.

Mr. Bingham

To the Secretary of State.

Subject.

Notification to Mariners, No 1-1884

Madanomisaki Light-

Notice to Mariners.

No. 1 of the 17th Year of Meiji (1884).

WADANOMISAKI LIGHT.

EXHIBITION OF LIGHT FROM NEW TOWER.

THE Government of Japan hereby gives notice that Wadanomisaki Lighthouse, south west of Kobe anchorage, having been rebuilt of iron, the 4th Order Fixed Red Light will be shown from the New Tower on the night of the 1st March, 1884, and every night thereafter from sunset until sunrise.

The New Iron Tower stands at the distance of 50 feet in a westerly direction from the position of the old wooden tower, and is 46 feet high from the base to the centre of the lantern. It is hexagonal in shape and painted white. The total elevation of the Light above the sea will be 52 feet, and its range of visibility 12 nautical miles, cut off bearings (from the Lighthouse) being N. 27° W. and S. 68° W.

SASAKI TAKAYUKI,
Minister of Kobusho.

Tokio, Jan. 20th, 1884. J. 29. 2w.

No. 1815. United States Legation

Tokei, Japan, Feby 25th 1884.

Hon. Fred'k T. Frelinghuysen;

Secretary of State

Washington D.C.

Sir:

Herewith I have the honor to enclose for the information of the Departments of the Treasury and Navy respectively, several copies of an official "Notice to Mariners" issued by His Imperial Japanese Majesty's Government on the 20th ultimo, to the effect that Wadano-misaki Light-House South west of Kobe anchorage, has been rebuilt of iron and that the 4th order fixed red light will be shewn from the new Tower on the night of March 1st next-

next- and every night- thereafter
from sunset until sunrise.

I have the honor to be,

Sir,

Your obedient- servant,

W: A. Bingham

Enclosure - Nineteen copies of "Notice
to Mariners No 1. 1884.
"Wadamisaki Light-"

acceptance noted April 1. /84

No. 1816 acdd by mail file

Copy to Navy & Sec. of Treas.

DEPARTMENT OF STATE
MAR 31 1884
RECEIVED.

Morning

United States Legation

Tokei, Japan, 25th Feby 1884.

Mr. Bingham

To the Secretary of State

Subject-

Zero of Longitude and Standard of time Conference. Japan will send delegate.

No. 1816.— United States Legation

Tokei, Japan, 25th Feby 1884.

Hon: Frederick T. Frelinghuysen,

Secretary of State,

Washington, D.C.

Sir:

Having communicated to His Excellency the Minister for Foreign Affairs in accordance with Circular Instruction of date the 1st December 1883, by a note dated the 15th of January last, that the President had appointed the 1st day of October 1884 for the meeting at Washington City of the International Conference for the purpose of fixing upon a Meridian proper to be employed as a common Zero of Longitude and Standard of time reckoning throughout

throughout the globe, and that I had been again instructed to tender to His Majesty's Government an invitation to be represented therein by one or more delegates, not exceeding three, I now have the honor to acquaint you in reply to a further note of enquiry addressed by me on the 8th instant to the Minister for Foreign Affairs His Excellency Ito Hirobumi His Imperial Japanese Majesty's Acting Minister for Foreign Affairs on the 21st inst informed me that it is the purpose of His Majesty's Government to be represented at said Conference by Mr. Kikuchi Dairoku Professor of the University of Tokio who will in due time be sent to Washington as the Delegate

of

of Japan in the proposed
Conference. I beg leave to enclose
herewith a copy of the note
of Mr. Ito above mentioned. I beg
leave to refer you to My No. 1799 of date
the 16th of January last on this subject.

I have the honor to be,

Sir,

Your obedient-servant,

Wm. A Bingham

Enclosures:

No 1 Mr. Bingham to Mr. Ito of
date Feby 8th. 1884.

No 2 Mr. Ito to Mr. Bingham of
date 21st Feby 1884.

Enclosure No. 1 with Mr. Bingham's No 1816.

Mr. Bingham to Mr. Ito.

Copy.

No. 2272

United States Legation

Tokei, Japan, 8th Feby 1884.

His Excellency

Ito Hirobumi, (Sangi)* *(Privy Council)

H. I. J. M's Acting Minister for Foreign Affrs.

Sir:

Referring to your note of the 31st ult. concerning the proposed International Conference to be held at Washington on the 1st October 1884 for the purpose of fixing if possible upon a meridian proper to be employed as a common Zero of Longitude &c, I beg leave to request that I may be informed at as early a day as may be convenient if it still is the purpose of His Majesty's Government (as heretofore expressed)

to

to be represented at the proposed Conference, and if so please forward me the name or names of the Delegates which may be appointed thereto on behalf of Your Excellency's Government.

Receive the renewed assurance of my highest Consideration

(Sgd) John A. Bingham

Enclosure No. 2 with Mr. Bingham's No. 1816.

Mr. Ito to Mr. Bingham. (Copy)

Translation. No. 7 Foreign Office

Feby 21st 1884.

His Excellency

John A. Bingham

&c &c &c

Sir:

Referring to the proposed - International Conference to be held at Washington on the 1st October next, for the purpose of fixing upon a Meridian proper to be employed as a common zero of longitude and standard of time reckoning throughout the globe, I have the honor to acknowledge the receipt of Your Excellency's note of the 8th instant requesting me to inform you if it

it is still the purpose of His Majesty's Government to be represented at the said Conference, and if so, to furnish you the name or names of the delegates who may be appointed thereto on behalf of my Government.

I beg leave to say in reply that His Majesty's Government will be represented at the Conference by Mr. Kikuchi Dairoku, Professor of the University of Tokio, who will be sent thereto as Japanese delegate, as you were informed by His Excellency Mr. Inouye in his note of the 14th of the 5th month last year.

I avail myself of this occasion to renew to Your Excellency the assurance of my highest consideration.

(signed)

Ito Hirobumi,

H. I. J. M's Acting Minister for Foreign Affairs

DEPARTMENT OF STATE
MAR 31 1884
RECEIVED.

File

Writing

No. 1817.

U. S. Legation,

Tokei Japan. 25th Feby 1884.

Mr. Bingham

To the Secretary of State.

Subject.

Receipt of Instructions.

No 1817. United States Legation.

Tokei, Japan, Feb. 25th 1884.

Hon. Frederick T. Frelinghuysen,

Secretary of State,

Washington. D. C.

Sir:

I have the honor to acknowledge the receipt of Instructions numbered respectively 789. 790, 791, 792, 793, 794, 795 and 796, also the receipt of special Instructions not numbered of date. December 12th 1883 in relation to a work entitled "The Public service of New York State." and also Circular Instruction of dated January 4th 1884. in relation to telegraphic vouchers and the mode of reporting the same to the Department.

I have the honor to be. Sir,

your obedient servant.

Mc A. Kingham

ck by no file

Griffin says books were sent through mistake. Shall they be sent to Yokohama

DEPARTMENT OF STATE
MAR 31 1884
RECEIVED.

No. 1818.

United States Legation.

Tokei, Japan. 26th Feby 1884.

Mr. Bingham,

To the Secretary of State.

Subject.

Non-receipt of a work entitled "The Public Service of the State of New York."

No. 1818. — U. S. Legation.

Tokei, Japan, 26th Feby 1884.

Hon. Frederick T. Frelinghuysen,

Secretary of State,

Washington, D. C.

Sir:

Referring to your Instruction not numbered of date the 12th of December last wherein you acquaint me that you had caused to be forwarded to me at the instance of the Regent of the University of New York a copy of a work entitled "The Public Service of the State of New York" intended for presentation to the Government of Japan, I beg leave to inform you that the work above mentioned has not

reached

reached me. Should the work come to hand, it will give me pleasure to inform His Excellency the Minister for Foreign Affairs and present the work to him in accordance with your instructions.

I have the honor to be, Sir,

Your obedient servant,

Wm. A. Kinsman

DEPARTMENT OF STATE
MAR 31 1884
RECEIVED.

W. Dias
+
Mr. Thilton

Answered Apr 14, 1884 ordered

No 1819.

U.S. Legation,

Tokei Japan. Feby 26th 1884.

Mr. Bingham

To the Secretary of State

Subject.

The Consular Agency at Hakodadi. Request of the Japanese Government to have it reestablished.

No. 1819 United States Legation.

Tokei, Japan, Feby 26th 1884.

Hon Frederick T. Frelinghuysen,

Secretary of State,

Washington. D. C.

Sir:

Referring to instruction 796 of date the 16th ultimo in relation to my correspondence with this Government in regard to the Consular Agency at Hakodate as communicated to you in my No 1783 of the 8th of December last, I now beg leave to invite your attention to the note of His Excellency Mr. Ito, the acting Minister for Foreign Affairs, a copy of which is herewith enclosed wherein the Minister

States

states that His Majesty's ~~x~~ Government has established at Hakodadi judicial tribunals which are open for the convenience of American citizens residing there who may have cause of action or complaint against Japanese, and asks that I consider and communicate to our government the inconvenience that must result to Japanese creditors having claims against Americans, if they are compelled for want of a U. S. judicial tribunal at Hakodadi, to institute their actions in Yokohama a port so distant from Hakodadi that in cases involving but small

sums

sums "Japanese subjects will
"be in fact virtually deprived
"of any remedy whatever and
"will have good grounds to
"consider that the Treaty
"stipulations have been disregarded."
The Minister in these remarks
doubtless has reference to the
VI Article of our Treaty of 1858
with Japan which provides among
other things that the Consular
Courts of the United States
should be open to Japanese
to recover their just claims
against American citizens.
As Hakodadi is about five
hundred and forty miles distant
from Yokohama it would seem
that without a United States

Consular

Consular officer at Hakodadi
invested with judicial powers
the Japanese having good cause
of complaint for injuries or right
of civil action for the recovery of
just claims against American
citizens at that port, would
be subjected to great cost and
inconvenience in obtaining
redress in our Courts.

In accordance with the request
of His Majesty's Minister, I
respectfully submit the enclosed
copy of his note for your
consideration.

I have the honor to be, Sir,

Your obedient servant,

Mc A Bingham

Enclosure.
Mr. Ito to Mr. Bingham dated Feb. 4th 1884.

Enclosure No. 1 with Mr. Bingham's No. 1819.

Translation (copy) Foreign Office

No. 6. Tokio Feby 4th 1884.

His Excellency

Jno. A. Bingham

&c &c &c

Sir:

I have the honor to acknowledge the receipt of Your Excellency's note of December 8th last, in reply, to His Excellency Mr. Inouye's Communication of the 3rd of that month in relation to the Closing by the United States Government of its Consulate at Hakodate.

Your Excellency states in the Note under acknowledgement, that you were instructed by your Government, "that it was not considered advisable "that a Consul be appointed at "Hakodate,

"Hakodate, and that it was not
"supposed that the interest of the
"administration of justice in that
"port would thereby subserved."

I beg leave to say that Hakodate is one of the open ports of the Empire, the place is frequented by vessels carrying the flag of the United States, and some American Citizens reside there. Under these circumstances, it is reasonable to apprehend that suits of different nature will naturally arise between your countrymen and ours, His Majesty's has therefore established judicial Tribunals at Hakodate, which according to the provision of the treaty between our respective Countries, are open to American

Citizens

citizens for the convenience of presenting their claims in that port.

Your Excellency's Government has however notwithstanding all this, closed the United States Consulate at Hakodate without other feasible arrangements being made for the entertainment of the claims which may be brought by the Japanese subjects against your countrymen.

If Japanese creditors are not enabled to recover their claims against your countrymen, except by instituting suits at the United States Consular Court at the distant port of Yokohama, even when the amount involved is only trifling, these creditors will be in fact virtually deprived of any

remedy

remedy whatever, and they will have good grounds to consider that the treaty stipulations have been disregarded and in consequence complaints of a grave nature may arise.

In requesting therefore that Your Excellency will have the goodness to take these circumstances into your full consideration and to again communicate them to the United States Government, I beg to renew to You the assurance of my highest consideration.

(Sgd) Ito Hirobumi, (Sangi)
Acting Minister for
Foreign Affairs.

Sent by no 1 file

DEPARTMENT OF STATE
MAR 31 1884
RECEIVED.

Enclosing

No 1820.

U. S. Legation,

Tokei, Japan. Feb'y 26th 1884.

Hon. Bingham

To the Secretary of State,

Subject.

Towarding of thanks to the Foreign Office for the information relative to the Diplomatic Service of Japan.

No. 1820. U. S. Legation.

Tokei, Japan. 26 Feby 1884.

Hon. Frederick T. Frelinghuysen,
Secretary of State,
Washington, D. C.

Sir:

In accordance with instruction No. 795 dated the 16th ultimo, I have the honor to acquaint you that in accordance therewith I did on the 19th instant address to the Acting Minister for Foreign Affairs a note wherein I s conveyed to His Excellency Mr. Inouye, the thanks of the Department of State for so kindly furnishing to our government the desired and valuable information concerning the

Diplomatic

Diplomatic service of Japan which he was pleased to communicate with his note of the 7th of December last.

I have the honor to be, Sir,

Your obedient servant.

Mc A Singhem

Rec'd by Mr Hitt.
Ans. Mr Bingham's
No 218 3-

DEPARTMENT OF STATE
MAR 31 1884
RECEIVED.

W Ming

No 1821.

U. S. Legation,

Tokei, Japan. Feby 26th 1884,

Mr. Bingham

To the Secretary of State,

Subject.

Manchurian Ginseng seed sent with despatch no. 1803. Janry 17th 1884.

No 182.

U. S. Legation,

Tokei, Japan. 26th Feby 1884.

Hon. Frederick T. Frelinghuysen.

Secretary of State,

Washington, D. C.

Sir:

In reply to Instruction No. 790, dated the 10th ultimo in relation to the Ginseng seed of two kinds to wit; Japanese and Manchoorian I beg leave to refer to my No 1803, of date the 17th of January last, with which I forwarded a small box filled with the Manchoorian seed, and also informed you in my # despatch that the Japanese would be forwarded as soon as the same could be secured by this Government, the delay being

being unavoidable.

I hope the box of seed sent with my No. 1803 has reached you in good order.

I have the honor to be, Sir,

Your obedient servant.

Mc A. Pinghurst

acd by Mr Hatfield

DEPARTMENT OF STATE
MAR 31 1884
RECEIVED.

Mr Wing

No. 1822.

U. S. Legation,

Tokei, Japan. Feby 26th 1884.

Mr. Bingham

To the Secretary of State.

Subject.

Thanks for three volumes of the Foreign Relations for 1882 ~~~ received at this Legation.

No. 1822. U. S. Legation,

Tokei, Japan. Feb'y 26th 1884.

Hon. Frederick T. Frelinghuysen,

Secretary of State,

Washington. D.C.

Sir:

I pray you to accept my thanks for three (3) copies of the Volume of the Foreign Relations for 1882, which you were pleased to transmit to me as noted in your Instruction No. 789.

I have placed one of the volumes in the Library of this Legation and will send a copy to the Foreign Office and retain one by your favor for myself.

I

I have the honor to be, Sir,

Your obedient servant,

M. A. Stringham

Unable to obtain a copy of Norrie's report on Perry's visit

DEPARTMENT OF STATE
MAR 31 1884
RECEIVED.

W Wing

No. 1823.

U. S. Legation,

Tokei. Japan. Feb. 26th 1884.

Hon. Bingham.

To the Secretary of State,

Subject.

Requisition for a copy of Commodore Perry's Expedition to Japan.

No. 182-3. U. S. Legation,

Tokei, Japan. Feb'y 26th 1884.

Hon. Frederick T. Frelinghuysen,

Secretary of State,

Washington, D. C.

Sir:

If there be extra copies remaining of the Report of Commodore Perry's Expedition to Japan, I will be greatly obliged if you will be pleased to forward one copy thereof for the use of this Legation, to be placed in its library, and kept there as the property of the United States.

I have the honor to be, Sir,

Your obedient servant,

John A. Bingham

Feb 64 No 1 file

DEPARTMENT OF STATE
MAR 31 1884
RECEIVED.

Griffin's copy books
Ltr sent dept May 31. 84

Inclosing

No. 1824.

U. S. Legation.

Tokei, Japan. Feb'y 26th 1884.

Hon. Bingham.

To the Secretary of State.

Subject.

Non-receipt of the 2nd Volume of the final report of the 10th Census.

No. 1824. U. S. Legation,

Tokei. Japan. 26th Feby 1884.

Hon. Frederick T. Frelinghuysen,

Secretary of State.

Washington D. C.

Sir:

I beg leave to inform you that I received through the Department in the official pouch on the 9th instant, a printed circular dated the 29th of December last signed by the Honorable Mr. Teller, in which it was stated that the Secretary had delivered to the Honorable Secretary of State, a copy of the 2nd volume of the final reports of the 10th Census of the United States for the use

use of this Legation, and that a second copy thereof was also sent to my care" for delivery to the Japanese government. Neither of these copies has reached me. Should they come to hand, the request of the Honorable Secretary of the Interior will be carried out.

I have the honor to be, Sir,

Your obedient servant.

Jno. A. Bingham

Ack by mail

DEPARTMENT OF STATE
MAR 31 1884
RECEIVED.

In Coding

No. 1825

United States Legation

Tokei, Japan, Feby 26th 1884.

Mr. Bingham

To the Secretary of State

Subject

Stamp tax upon legal documents connected with civil cases in U.S. J. M's Courts.

No 1825 — United States Legation

Tokei Japan, 27th July 1884.

Hon. Fredk T. Frelinghuysen

Secretary of State

Washington, D.C.

Sir:

Herewith I have the honor to enclose for your information a translation copy as published in the Japan Daily Herald of the 26th inst- of the official Notifications Nos 4 and 5 of this Government and of the Regulations therein mentioned to be enforced on the 1st of April next- providing a stamp tax upon legal documents "connected with civil cases" in his Majestys Empire and prescribing the rates thereof.

I

I have the honor to be,

Sir,

Your obedient-servant

Wm A Simpson

Enclosure -

Translation copy of Imperial

Notifications No. 4 and 5 Japan Daily Herald

of date 26th Feby. 1884.

The Japan Daily Herald.

TUESDAY, 26TH FEBRUARY, 1884.

NOTIFICATION No 4 OF THE *Daijo-Kwan*.

The Regulations respecting Stamps to be used on legal documents having been promulgated by Notification No 5, the varieties and prices of stamps, and the way of affixing them have been set down as follows:—

yen —. 3 *sen*	... ...	stamps 1	grey.
„ —. 5 „	... ...	„ 1	black.
„ —.10 „	... ...	„ 1	red.
„ —.50 „	... ...	„ 1	yellow.
„ 1.— „	... ...	„ 1	blue.
„ 10.— „	... ...	„ 1	orange.
„ 15.— „	... ...	„ 1	green.
„ 20.— „	... ...	„ 1	brown.

Stamps shall be affixed on written appeals and the originals of other documents and shall be stamped with the seals of persons affixing them.

The above is hereby notified.

SAN JO SANEYOSHI,
Prime Minister.

YAMADA AKIYOSHI,
Minister of Justice.

February 23rd the 17th year of Meiji.

NOTIFICATION No. 5 OF THE *Daijokwan*.

THE Regulations respecting the Stamps to be fixed upon legal documents connected with Civil cases have been established as subjoined, and will be enforced on and after the 1st April of the 17th year Meiji.

N.B.—The above Regulations as set down in December of the 8th year of Meiji by Notification No. 196, shall stand void after the above date.

By Imperial decree we notify the above.

SANJO SANEYOSHI,
Prime Minister.

YAMADA AKIYOSHI,
Minister of Justice.

February 23rd, the 17th year of Meiji.

Art. 1.—Stamps shall be affixed to all legal documents connected with Civil cases according to these Regulations.

Art. 2.—Stamps shall be affixed to original legal applications in the following proportion to the amount claimed or the value of the claims, when they are received by the Courts.

The amount claimed or the value of the claim.			Stamps.
To 5 Yen			20 Sen.
„ 10 „			30 „
„ 20 „			60 „
„ 50 „	1	Yen	50 „
„ 75 „	2	„	20 „
„ 100 „	3	„	—
„ 250 „	6	„	50 „
„ 500 „	10	„	—
„ 750 „	13	„	—
„ 1,000 „	15	„	—
„ 2,500 „	20	„	—
„ 5,000 „	25	„	—

above 5,000 Yen, additional stamps of 2 Yen shall be affixed for every sum under 1,000 Yen.

Additional stamps shall be affixed of half the amounts mentioned above in the case of appeals to the Court of Appeal, and of double the original amounts in appeals (against original judgements) to the Court of Cassation.

Art. 3.—If a claim refers to personal affairs, or is such that it cannot be computed in money, stamps of 3 Yen shall be affixed, and additional stamps must be affixed in case of appeals being made to the Court of Appeal, or the Court of Cassation, at the same rate as in the previous article.

N. B. In case the claim refers to personal affairs, the judge may release an appellant from using additional stamps, if he is extremely poor, and is provided with a certificate of the "Kocho" to that effect.

Art. 4.—Stamps of 20 sen shall be affixed to original documents of the following descriptions;—written pleas, copies of testimonials, replications, rejoinders, declarations and depositions; written applications for summons of witnesses; arbitrators; assessors, and parties concerned; and written applications for the postponement of hearings.

Art. 5.—Stamps of 50 sen shall be affixed to the following descriptions of document;—written applications for the presence of and inspection by officers; written applications for the seizure of property, or for the public sale of goods; written applications for the issue of written orders, for the execution of judicial orders; written applications for the declaration of bankruptcy.

Art. 6.—Stamps shall be affixed to the receipt for copies of judgments in the proportion of 5 sen per "mai" (two pages) and for copies of other sorts in the proportion of 3 sen per "mai."

N. B. Every "mai" of the copies of a judgment shall have 12 lines, each of 12 characters, and every "mai" of other copies 20 lines each with 18 characters.

Art. 7.—In case of compromise, stamps of 20 sen shall be affixed on the paper for every point of compromise acknowledging it when seals are affixed to the paper.

Art 8.—The price of the stamps used according to these Regulations shall be paid by the losing party.

Art. 9.—The varieties and prices of stamps and the way of affixing them will be published by later notifications.

Art. 10.—Stamps are sold at the selling establishments sanctioned by the "Cho" and shall not be sold at other places.

Art. 11.—Persons who have sold stamps at places other than those sanctioned by the authorities are, liable to a fine of from 20 to 200 Yen and such stamps shall be confiscated. Persons purchasing them while cognizant of the fact, are liable to a fine of from 10 to 100 Yen, and such stamps shall be confiscated.

Art. 12.—To the violators of the provisions of these Regulations the provisions in the Criminal Code respecting the exclusion of penalties, alleviation, or aggravation of penalties on repetition of crimes, and concurrence of crimes shall be applied.

Acted Officer April 9 1st Cipher

DEPARTMENT OF STATE
MAR 31 1884
RECEIVED.

No. 1826. U. S. Legation.

Tokei, Japan, 27th Feby 1884.

Mr. Bingham.

To the Secretary of State.

Subject.

Lease of Captain Boroone. — Further Correspondence between Mr. Bingham and the Minister of Foreign Affairs in relation thereto.

No. 1826. United States Legation,

Tokei, Japan. 27th Feby 1884.

Hon. Frederick T. Frelinghuysen

Secretary of State,

Washington, D. C.

Sir:

Again referring to your Instruction No. 731, dated April 23d 1883. in relation to the claim against this Government of Captain Wm R. Browne, of the Schooner "Wilmington," which I had the honor to present for the consideration of this government under the instructions of the Department in October 1879, I now beg leave to further acquaint you of the action taken by me in pursuance of your said instruction to obtain

a

a just and speedy settlement of the said claim.

After several personal interviews with His Excellency, Mr. Inouye, the Minister for Foreign Affairs, during the past summer, wherein I fully stated the case of Captain Browne and the views expressed in your instructions and in that of your honorable predecessor (Mr. Evarts.) I did on the 5th of Sept. last address a note to the Minister re-stating the case and urging the payment of the claim, a copy of which is enclosed. 1/

To this note a reply was made under date the 13th of December last by His Excellency, Mr. Ito, Acting Minister for Foreign Affairs

in

(in the absence of Mr. Inouye), a
2/ copy of which reply I have the
honor to enclose. You will please observe
that in his reply Mr. Ito, after
referring to the lapse of time
hitherto set up by the Minister of
Foreign Affairs as a bar to the
claim, adds that "in deference
" however to the suggestions
" contained in the note now under
" reply and in view of the friendly
" disposition and spirit of justice
" constantly manifested by the
" Government of the United States
" towards Japan, His Imperial Majesty's
" Government "(in his opinion)" feel
" disposed to set aside, for the
" time being, the determination
" hitherto expressed, and irrespective

of

"of the exceptional delay which has
"occurred in the presentation of
"the claim, enter upon a consideration
"of the question, provided Captain
"Browne establishes by clear and
"indisputable evidence that it has
"been his intention from the first
"to prosecute his demand, but that
"he had been prevented from so
"doing by unavoidable circumstances"
and further adds that the final
disposition of the claim depends
on the nature of the evidence, and
that it is incumbent upon Captain
Browne to establish by conclusive
proof the allegations upon which
his claim rests and also the
specific damages.

On the 28th ultimo I made
answer

R 3/ answer to Mr. Ito, (a copy of which answer is herewith) wherein I expressed the opinion that the conditions named in the Minister's note as pre-requisites to the consideration of the claim of Capt Browne seem to imply that the evidence heretofore adduced by Captain Browne and submitted by me to the Foreign Minister had not been examined by His Excellency,

I also pointed out in my answer that the evidence heretofore filed by me shews conclusively that Captain Browne from the first prosecuted his claim by invoking through Mr. Consul Murphy in 1855 the aid of our

Government

Government to recover from Japan a just indemnity for losses; second, that it also fully explains the reasons why the claim was not sooner considered and presented by our government; third, the actual amount of Captain Browne's losses upon his cargo & by reason of the unlawful acts of the Japanese officials at Simoda; fourth, that he suffered, by reason of their unlawful acts, the further loss arising by the breaking up of his voyage; and finally the loss of his vessel for which last named losses no demand is made, adding that the forbearance of our government in demanding only

only the loss on the cargo of
#20316 should have weight
with the government of Japan.

I had a personal interview
with Mr. Inouye on the subject
on the 23d instant and received
from him assurance that he
would carefully consider the case
now that I had so fully re-stated
it.

I sincerely trust that the
Minister may be able to satisfy
his Government that the claim
is just and should be paid.

Hoping that you may find
my presentation of the claim as
set forth in my note of the 28th
ultimo satisfactory, and that
you will be pleased to give me

such

such further instruction as you deem advisable in the premises,

I have the honor to be, Sir,

Your obedient servant,

Jno A Bingham

Enclosures. 3.

No. 1. Mr. Bingham to Mr. Inouye.
dated, Sept. 6th 1883.

No. 2. Mr. Ito to Mr. Bingham.
dated, December 13th 1883.

No. 3. Mr. Bingham to Mr. Ito,
dated Jan'y 28th 1884.

Enclosure No. 1. with Mr Binghams No.

(Copy). Mr. Bingham to Mr. Inouye.

No. 2168. United States Legation

Tokei, Japan, Sept. 5th 1883.

His Excellency

Inouye Kaoru

H. I. J. Ms Minister for Foreign Affairs.

Sir:

I have the honor to acquaint you, as I have heretofore done in our recent interviews, that on the 25th of May last, during your absence, I received from my Government an instruction directing me to revive the claim of Captain William R. Browne of the Schooner "Wilmington", against His Imperial Japanese Majesty's Government, for the loss to which he was subjected on the 19th of August

August in the year 1855, and for days following, by reason of the unlawful action of the officials of Japan in the harbor of Simoda, and which claim with the evidence to support it, and to explain the long delay in its presentation I had the honor to submit to you in my dispatches numbered respectively No. 1094 dated Oct 4th 1879, and No. 1193 dated 9th April 1880, to each of which dispatches and the testimony therewith I respectfully ask your attention.

It is confidently believed by my Government, and also by myself that this claim as presented is just, reasonable and equitable; and that upon a full consideration of the testimony filed in your office with my No. 1193 of date April 9th 1880

1880, in view of the friendly justice manifested by the Government of the United States to Japan, His Imperial Japanese Majesty's Government will in a like friendly and just spirit regardless of the question of the mere lapse of time Consider the claim of Captain Browne and its merits; and upon ascertaining the simple facts of the case (Concerning which there cannot be a shadow of doubt upon the testimony) will tender to Captain Browne such compensation as may appear to Your Excellency to be adequate and equitable. For your convenience and in accordance with your verbal request, I re-state the claim of Captain Browne, as shewn by my said despatches, and

by

by the testimony in your possession:
January 23rd 1855, the "Wilmington" under
Command of Captain Brune sailed
from New London Connecticut with
a Cargo of general Merchandise and
ship Slines arrived off Simoda
harbor in a leaky condition
19th August 1855 and cast anchor,
Captain Brune immediately
addressed a letter to the Governor
of Simoda requesting permission
to be allowed to exchange his
Cargo with the Japanese people
for goods of their manufacture,
the Cargo at that time being
slightly heated by the leak, but
not materially damaged. This
letter was not answered but was
returned to the Captain accompanied
by

ly orders to leave the Country; the vessel was kept under Strict surveillance by fifteen armed boats, the vessel being within one mile of the shore; the officers of the boats would not permit the Captain to hoist his cargo on deck to dry and also to enable him to stop the leak of the "Wilmington," they refused to take his goods for a spar, and demanded an exorbitant price for it, The Captain asked permission to land his cargo, and repair his vessel This was refused; and finally he put to sea, his vessel in a worse condition than when he entered the Harbor of Simoda.

Captain Perrine reached Shanghai on the 29th of November 1855 and on that day

day he filed a protest with R. B. Murphy U.S. Consul at Shanghai; which protest was promptly forwarded to the Department of State, and remains on file in that Department. The damages claimed without interest, as heretofore stated by me under the direction of my Government in my No 1094 of date Oct. 4th 1879, was $20,316 00, while the testimony on file shews that the actual damage sustained was at least $36,000 00. See my No 1193 of date Apl. 8th 1880, and the testimony therewith on file in your Office.

The facts shown to by Captain Browne and Mr. George G. Tilch now in your possession, and their sworn statements are considered by my Government conclusive of the

the facts, and it is supposed, will be accepted as conclusive by Your Excellency's Government. Upon the facts as sum to, it is clear that the officials of Simoda Harbor, by their action, as above stated, violated the express treaty rights of Captain Browne, a citizen of the United States, as guaranteed to them by the Treaty concluded by the Government of Japan with the United States through Commodore Perry on the 31st March 1854, the exchange of the ratifications of which treaty between the two Governments took place the 21st July, 1855, and from the day and year last named became obligatory, and was in full force at the time of Captain Browne's

arrival

arrival in, and departure from the harbor of Simoda in 1855.

You will please note that this treaty of 1854 provides amongst other things, that the port of Simoda &c shall be open for the reception of American ships; where they should be provided with wood, water provisions, coal and other articles which their necessity might require, as far as the Japanese should have them (art. II) that ships of the United States thrown on the coast of Japan, the Japanese vessels will assist, and convey their crews to Simoda, (art III), and it was further agreed therein, that ships of the United States resorting to Simoda "shall be permitted to exchange

Exchange articles of goods" (art. VII)

It is claimed by my Government that the action of the Officials at Simoda, as herein shewn and clearly established by the sworn statements of Captain Browne and Mr. Tilch, was in flagrant violation of these treaty rights of the United States, and of Captain Browne, and of the corresponding treaty obligations of the Japanese Government and that therefore the damages occasioned thereby to Captain Browne's vessel and cargo is a just liability of the Japanese Government which it is believed Your Excellency's Government will recognize and make reasonable and just allowance therefor to Captain Browne.

I.

I most respectfully submit the foregoing to your consideration, and sincerely hope that it may be the pleasure of Your Government to consider the claim on its merits, not doubting that Your Excellency's Government will come to a reasonable and satisfactory conclusion.

I avail myself of the occasion to renew to Your Excellency the assurance of my highest consideration.

(Signed) Jno A Bingham

Enclosure No. 1 with Mr. Bingham's No.

Translation Copy. Mr. Ito to Mr. Bingham.

No. 58. Foreign Office, Tokio

December 13th 1883.

His Excellency

John A. Bingham

Envoy Extraordinary and Minister Plenipotentiary

of the U.S.A.

Sir:

I have the honor to acknowledge the receipt of Your Excellency's note dated September 5th in which you informed me that you had been instructed by the Government of the United States to revive the subject of the claim of Captain William R. Browne of the Schooner "Wilmington" against H.I.M's Government for the losses said to have been sustained by him during

during the month of August, in the year 1855, in consequence of the alleged unlawful acts of the Japanese officials at Simoda.

In reply I beg leave to acquaint Your Excellency that the claim of Captain Brune was for the first time submitted to the consideration of this Government by Your Excellency's note of October 4th 1879 or nearly twenty five years after the alleged occurrences which gave rise to it were committed.

Under these circumstances, I felt bound in my replies to your communications upon the subject, to urge the conviction that the lapse of time ought in justice, to be regarded as an absolute bar to

the

the Claim.

In deference, however, to the suggestions contained in the note now under reply, and at the same time, in view of the friendly disposition and spirit of justice constantly manifested by the Government of the United States towards Japan, H. I. Ms Government would, I am constrained to believe, feel disposed to set aside, for the time being, the determination hitherto expressed, and, irrespective of the exceptional delay which has occurred in the presentation of the claim, enter upon a consideration of the question, provided Captain Browne establishe by clear and indisputable evidence that it had

had been his intention from the
first, to prosecute his demand,
but that he had been prevented
from so doing by unavoidable
circumstances.

The evidence in justification
of the unexplained delay, should,
I am persuaded, be explicit and
manifestable, otherwise H. B. M's
Government would be compelled
to adhere to the views before
entertained.

I may be permitted to add, with
reference to the claim itself, that
the final action of H. B. M's
Government necessarily depends
upon the nature of the evidence
produced in support of it, and
I venture to think Your Excellency
will

will agree with me that it is incumbent upon Captain Browne to establish by conclusive and contemporaneous proof, the allegations upon which his demand rests, and the nature and specially the amount of the damages resulting directly from the alleged un-lawful action of the Japanese authorities.

I avail myself of this occasion to renew to your Excellency the assurance of my highest consideration.

(Sgd) Sto Hirobumi
Sangi and Acting Minister
for Foreign Affairs.

Enclosure No. With Mr. Bingham's No.

Copy. Mr. Bingham to Mr. Ito.

No 2262. United States Legation

Yokohama Japan 28th January 1884.

His Excellency

Ito Hirobumi, Sangi

M. J. M's Acting Minister for Foreign Affairs,

Sir:

Acknowledging the receipt of your communication No. 58. of date the 13th ultimo in reply to my note of date the 5th September last concerning the claim heretofore presented by my Government against that of Japan on behalf of Captain William R. Brune, of the Schooner "Wilmington" for losses occasioned to him by reason of the unlawful acts of the Japanese officials in refusing and denying him

him the privileges guaranteed
to him by Treaty when he entered
the harbor of Simoda August 19th
1855, and prohibiting him from
landing, or exchanging, his goods
in Simoda and from passing them
to the deck that he might repair his
vessel which was leaking and
otherwise damaged, and thereby
breaking up his voyage, and
directly causing the loss of his
cargo, and indirectly the loss of
his vessel; I note that Your
Excellency expresses the opinion
that His Majesty's Government will
consider the claim thus presented
by my Government on behalf of
Captain Browne irrespective of the
delay in the presentation thereof
on

on the part of my government,
provided (1) that Captain Browne
established by "clear and indisputable
"evidence that it had been his
"intention from the first to prosecute
"his demand (2) that he had been
"prevented from so doing by unavoidable
"circumstances, (3) that the evidence
"in justification of the delay should
"be explicit and unobjectionable,
"and (4) that it is incumbent upon
"Captain Browne to establish by
"conclusive and contemporaneous
"proof the allegations on which
"his demand rests, and the actual
"and specific amount of damages
"resulting directly from the
"alleged unlawful acts"

The conditions thus required by

Your

Your Excellency as requisite to
be complied with by Captain
Browne before the claim will
be considered upon its merits
by His Majesty's government —
seem to imply that the evidence
heretofore adduced by Captain
Browne has not been examined by
Your Excellency. For the evidence
in support of Captain Browne's claim
and in explanation of the delay in
its presentation by my government
to His Majesty's Government for
payment, I would respectfully refer
you to the written protest of Captain
Browne filed on the 24th of November,
1855 before Mr. Consul Murphy,
U.S. Consul at Shanghai, and to
Mr. Murphy's certificate thereof
and

and the fact of its transmission by that officer to the State Department of the United States, where it still remains, wherein Captain Brunne stated his actual losses to be $36,000, which losses directly resulted by reason of the violation by the Japanese of the Treaty of Kanagawa, and to recover which losses he therein and at that time (24. Nov. 1855) invoked the aid of the U. S. Government through Mr. Consul Murphy.

It can hardly be doubted that the protest of Captain Brunne made as early as the 24th Nov. 1855 and the action taken thereon by the U.S. Consul at that time in accordance with the express

request

request therein made by Captain
Browne that the Consul "would
"adopt whenever means might
"appear to him best to secure
"him (Captain Browne) against the
"losses to which he had been
"thus wrongfully subjected" in
the premises by the unlawful acts
of the Japanese officials furnish
"indubitable evidence" that it was
Captain Browne's intention from
the first to prosecute his demand,
and that he did thereby institute
his prosecution for his claim.

These papers together with the
fact of their transmission in 1855
by Consul Murphy to the State
Department for action thereon
furnish conclusive evidence

that

that the delay of our government to present the claim at an earlier day was, so far as Captain Brune is concerned, "unavoidable" - unless you assume that in his enforced absence for five years in China and during his five years honorable service under our Government after his return in 1860, he was able to command action on this claim by my government. Any such assumption is excluded by the fact that our government cannot be commanded by any person to take up and prosecute a claim however meritorious against a foreign state. In all such cases the government of the United States acts at such times as

as it may deem advisable.

It is presumable that owing to the troubled condition of the domestic affairs of the United States, arising from the great rebellion, and the long continued disturbances resultant therefrom, that Captain Brome's Claim was never examined or considered by our Government until 1879, when it was adjudged by my Government to be a just claim to the amount of $20,316 Cy without interest and that the sum stated by Captain Brome viz excess of $20,316 Cy was made up of interest &c, and which sum of $20,316 Cy was then instructed to present for payment to His Majesty's Government and was expressly directed to state as

I

I did, to His Majesty's government
"that due reparation to the claimant
will be expected from that govern-
ment. Please observe that the
record evidence shews beyond
question that Captain Brown
availed himself of the first
opportunity to invoke the aid
of his government "to secure
"him against" this loss and to
redress the wrongs done him at
Simoda, This I am sure you
will concede when you consider
that the United States had no
representative in Japan in August
1855 nor until the arrival on the
21st August 1856 of Mr. Townsend
Harris, who did not obtain
audience of the Japanese government
until

until the 4th December 1857.

The lapse of time does not bar a State from the presentation of a just claim against a Foreign Power, nor does lapse of time release a State from its just liability arising, as in this case, from a flagrant and wanton breach of treaty obligations and a denial of treaty rights.

I cannot doubt that Your Excellency will be satisfied that no further explanation or proof is needed to justify the delay on the part of my government to present this claim to that of His Majesty for payment.

I venture to hope that the proofs on file in Your Excellency's office which

which I had the honor to transmit with my No 1193, dated April 9th 1880, and my No 1226, dated June 1st 1880 to His Excellency Mr. Irungu, will satisfy you as they have satisfied my Government and myself that the claim presented of $20,316.00 on behalf of Captain Brune is just and equitable and should in equity be paid without interest by Your Excellency's Government.

The proofs to which I refer are first: Extracts from the log book of the "Wilmington", which Extracts from the log book of the "Wilmington" were verified by oath and are on file in the Department of State, and by that Department accredited and submitted as evidence,

a

A reference to these Extracts will shew that August 5th 1855, the "Wilmington" left Hongkong for Simoda, Japan; that on the 6th at sea, the main boom was carried off, obtained a new one and on the 7th proceeded to sea; on the 9th main boom was again carried away in a squall; on the 10th schooner began to leak, and pumps employed. On the 19th August 1855, the "Wilmington" arrived at Simoda and cast anchor. 15 armed boats with fourteen men and one officer in each boat, all armed, immediately surrounded the "Wilmington" and ordered the Captain and officers of the "Wilmington" not to leave the vessel nor put any cargo on deck; the Captain remonstrated against this lawless and offensive surveillance, sent letter to the

Governor

Governor of Simoda and told the Japanese boatmen and officers that he wished to trade with them.

The letter was sent to the Governor and returned unopened. Commenced to hoist some cargo on deck in order to stop the leak in the vessel. Was ordered to stop! 20th August, the guard boat still close upon the vessel and Japanese officers stationed on board the "Wilmington," who said Captain Brown would not be allowed to trade with the people nor would anyone be allowed to receive his merchandise. The Captain asked leave to write again to the Governor and said that his Cargo needed to be put on shore to be dried and to enable him also to stop the leak

in

in the vessel and that he greatly needed a spar for a main boom and begged permission to land his Cargo for a week to enable him to make the needed repairs and to prosecute his voyage. The Japanese officials positively refused to take another letter to the Governor stating if they did so it would subject them to imprisonment and death. They further declared the Captain should leave nothing, nor sell nor exchange anything, but finally allowed the Captain to go ashore in person but would sell him nothing — although a European Cargo of the Dutch vessel "Creta" had recently been exchanged for Japanese goods; this was allowed because the owner

of

of the Dutch Cargo was "Lendorff", a German! The Captain asked for leave to obtain a Spar for a main boom, and told the officers he was in great need of it. This request was also refused. To this surveillance to which he was subjected he protested on the spot and told the officers he should protest against their Conduct. On the 21st August having been denied all his treaty rights and especially denied the privileges guaranteed to him as a citizen of the United States by the Treaty of Kanagawa of 1854, on the 21st August 1855 he stood out at sea, the guard boats following him for six (6) miles and the officers Charging him not to return.

The Captain sailed for Hakodadi

Where

where he hoped the officers would
at least allow him to land his —
Cargo long enough to examine it and
stop the leak in his vessel and supply
himself with a spar. August 24th
the Schooner still leaks and pumps
attended to. September 2nd anchored
in Hakodadi Harbor, Attempted
to purchase a spar, which at
home would cost but $20 — was
asked $120 — equal to $360 Japanese
dollars. Captain had but $110. Captain
offered goods to the amount asked for
a spar; this the Japanese refused.
Captain Brown told them he had
but $110 — and would make up
balance in goods and also told
them he could prosecute his voyage
without a spar for the main boom,
nor

Nor unless he should be allowed to land his cargo in order to stop the leak in the vessel. "The officials refused to grant either request." The Captain said to the authorities he would protest against their treatment. They answered that they were obeying orders. Sept. 10th finding cargo rapidly spoiling and being refused every privilege to which he was entitled by treaty the Captain records that he was compelled to "give up his projected voyage to the River Amoor, and sailed for Shanghai." Sept. 14th "Opened all the Latches: Let steam in the hold which is damaging the cargo rapidly". Sept. 27th Pumps repeatedly attended to as the log shews

shews they had been at all times
after the leak began. 29th Septemb
opposite Woosung, Chimes, at entrance
of the river procured a Spar for
the main boom to be ready in two
days, Sept. 30th "Employed breaking
"out the Hold; fuiel the Cargo in
"such bad condition thought it
"advisable to dispose of it at
"Shanghai to best advantage, it being
"too much damaged to proceed any
"further with it". New Spar brought
on board Oct 1st 1855. Employed over-
hauling Cargo; getting ready to move
to Shanghai. Oct 2nd. At daylight
got under way and came to anchor
off Shanghai at 8 A.M. on the 2nd Oct
1855. Immediately upon his arrival
at Shanghai, the Captain commenced

unloading

unloading to get at the leak;
found it two feet below water-
line, the oakum worked out, -
Calked the place and finished
before night-. Oct. 3rd Cargo all
out and Street. Schooner does
not now leak at all, having
found and stopped the only leak
in her. "Appointed Chief officer
"Irvine Welden, Captain of the
"Wilmington, as Captain Brine
"had to remain with the cargo
"to put it in condition to be disposed
"of". Oct. 4th 1855 is the following entry
in the log. "as soon as I can make
a proper estimate of the real loss
to the owners of the Wilmington"
"occasioned by the Japanese in not-
"allowing me to put my cargo on
"shore

"shore long enough to stop the
"leak and also in refusing to
"supply me with a spar for a
"main boom unless I paid them
"what I really did not possess
"$360 dollars, I shall protest against this
"non-fulfillment of Treaty obligations"

It further appears by this record
that the "Wilmington" having been
Chartered by Russell & Co a Chinese
house she in Oct. 1855, after
arriving in Shanghai; made a
voyage to Hong Kong; was injured
when returning to Shanghai and put-
back to Hong Kong for repairs, and
was repaired at a cost of more
that $8000 in U.S. Money. The Charter
money was retained by Russell & Co,
and the vessel having returned to

Shanghai

Shanghai was by them sold at auction in April 1856, and that the sum realized from her sale and the Charter Money did not pay the bill for repairs at Hongkong.

In corroboration of all that is stated in these extracts from the log book of the "Wilmington" I invite your special attention to the following papers transmitted to me by the Department of State and which I had the honor to transmit with my note to His Excellency Mr. Inouye under date 9th April 1880 to-wit:

The statement made under oath by Captain Browne and Gen. E. Filch; also the letter of Captain Browne to Consul Murphy and his written protest filed with Consul Murphy

making

making demand for indemnity for the losses occasioned by the acts of the Japanese officials at Simoda; also the official certificate of Consul Murphy transmitted by him with Captain Browne's written protest to the Department of State Nov. 27th 1855; also a letter of Mr. Thomas Filch to Captain Browne, dated, 24th January, 1880; and finally the letter of Consul Murphy to the Honorable Mr. Marcy, Secretary of State, wherein he says Captain Browne "is a trustworthy and "honorable man".

In justification of the demand made by my Government on behalf of Captain Browne, I beg that you will examine these several papers and

and that you will read my said
Note No. 1193, dated, April 9th 1880
to His Excellency Mr. Inouye.

I am instructed by the Department
of State to say that the foregoing
papers, affidavits and extracts
from the log book of the "Wilmington"
are believed to contain all the
testimony which Captain Brune
will be able at this late day to
obtain; and that the same establish
to the satisfaction of the Government
of the United States, as they certainly
do to my satisfaction the absolute
right of Captain Brune to be paid
by His Majesty's Government said
sum of $20,316.00 without interest

You will observe that in the
affidavit of Captain Brune made
at

at Washington Janᵛ 30th 1860 under the laws of the United States and the sanction of an oath, he says the schooner "Wilmington" arrived at Simoda Japan 19th of August 1855 in distress; that on arrival of the vessel at Simoda it was surrounded by armed boats and that an armed Japanese officer was put on board the "Wilmington", both the armed boats and officer remaining against the Captain's protest until the Wilmington had left Simoda and passed more than three miles outside the headlands of the harbor.

He further testifies that he informed the Japanese officer on board the "Wilmington" at Simoda that he wanted to land his cargo and send this

this after his letter to the Governor had been returned " " unopened with a verbal order (by the Governor) to leave the country at once. He also says his cargo was just beginning to decay on account of steam in the hold arising from the leak, and told the officer he had come into Simoda to stop the leak of his vessel and dry his cargo and also to replace his main boom broken at sea and near to Simoda. He further swears that the Japanese authorities would not grant him any of the privileges of the Treaty of 1854, and therefore he had to leave, the cargo being in a much worse condition than when he arrived in Simoda; that he sailed to

Hakodadi

Hakodadi and having arrived
there could not obtain permission
to land his cargo long enough
to stop the leak and air the cargo
and was not permitted to buy
a spar without paying $360 for it,
that he had less than half that sum
in money which he offered with
goods to pay the balance, but this
offer was refused and he was
thus constrained to leave, his
vessel leaking and disabled and
his cargo rapidly spoiling, and
sailed for Shanghai; that at
Shanghai he discharged his
cargo, which was in a very damaged
condition and in forty eight hours,
stopped the leak, and chartered
the vessel which sailed for

Hongkong

Hong Kong with all his crew save himself, he remaining at Shanghai to sell the Cargo to best advantage which he did, and after footing up accounts of sale he found that he had lost by the action of the Government at Simoda Japan $20,316 cts, not counting the interest paid on the Cargo nor expenses of Captain and Crew and victualling the same nor the insurance of vessel and cargo. He also states that the copy of the log book (on your record) is a sworn copy from the log book of the "Wilmington" and that he claims from the Japanese government $20,316 cts with interest from 19th day of Aug. 1855. The testimony thus given by

aff. davit

affidavit of Captain Brinne would be admissible in any Court of the United States, on this issue upon the appearance therein of Captain Brinne in person as a witness. So also would it be as I believe in His Majesty's Courts in Japan, and allow me to add supported as it is by the extracts from the log-book, and the protest of 1855, and the other documentary evidence before you would be conclusive of the question, his testimony being unimpeached, as it is, and as I believe unimpeachable.

I make this last remark that his testimony is unimpeachable - because my Government accredits his testimony because he is certified

officially

officially by Consul Murphy to be "a trustworthy and honorable man," because no attempt has been made to bring in question his truth or integrity, and because he was for five years (1860-1865) in the Volunteer Naval Service of my Government, and bore a commission of Lieut. Commander therein, and finally received an honorable discharge from that service with the thanks of the Navy Department of the United States for his faithful and Patriotic Conduct.

Allow me further to point out that the Treaty of Kanagawa was concluded between the United States and Japan, 31st March 1854 and the ratifications

Ratifications thereof Exchanged at Simoda, Feby 21st 1855; that by Art II, it granted that the ports of Simoda and Hakodadi should be open for the reception of American ships "where they should be supplied "with wood, water, provisions coal "and other articles their necessities "might require as far as the Japanese "might have them", and that the port of Simoda should be open to American ships on the signing of the Treaty 21st March 1854, and that of Hakodadi immediately after the same day in the year 1855, that is, 1st April 1855.

Art. IV declares that "Citizens of the "United States shall not be subjected "to Confinement" and Art V declares that

that "Citizens of the United States
"shall be free at Simoda to go
"where they please within the
"limits of seven Japanese li from
"a small island in that harbor"
&c. Art. VI provided "If there be
"any other sort of goods wanted xxx
"there should be careful deliberation
"between the parties (American citizens
"and Japanese) in order to settle
"such matters"

Art. VII declares "that Ships of the
"United States resorting to said
"ports shall be permitted to exchange
"gold and silver Coin and articles
"of goods", "under such regulations
"as may be temporarily established
"by the Japanese government for
"that purpose" &c Article VIII "wood,
"water

"water provisions Coal and
"goods required shall only be
"procured through the agency of
"Japanese officers"

In the light of the evidence herein referred to, it is not to be doubted that these treaty guarantees were utterly disregarded and grossly and wilfully violated by the officials at Simoda to the wrong and injury not merely of Captain Browne, but in derogation of the treaty rights of the United States for which wrongs and violations of said treaty the United States would be clearly justifiable in demanding of this government such indemnity to Captain Browne as would secure him

him against all damages to his vessel and cargo and all losses occasioned thereby including the breaking up of his sealing voyage to the North Pacific, but my Government had also the indisputable right to demand of His Majesty's Government for these outrages upon her Commercial interests such further assurance as would guarantee to all American vessels frequenting these waters protection from such wrongs in future.

In asking only the small indemnity of $20,316.00, the actual loss sustained by the destruction of the Cargo of the "Wilmington" through the wrongs of the government of Japan at

Simoda

Simoda My Government gives another instance of its friendly regard for Japan.

The facts shown to upon the record make it clear that but for the refusal of the officials at Simoda to respect the Treaty rights of Captain Browne and of the United States, there would not have been any cause for complaint on the part of my Government nor of Captain Browne on account of the loss on his cargo, the loss of his voyage and of his vessel, nor is there room to question the facts shown to, nor can this sworn testimony be rejected as untrue until it is disproved or rebutted which has not been done.

From

From all this it results that by
reason of the unlawful acts of
Simoda of the Japanese officials
the Cargo of the "Wilmington" was
substantially destroyed inasmuch
as the leak in the vessel could not
be reached and stopped without
landing the cargo, of which treaty
privilege Captain Browne was
wrongfully denied by the officials
at Simoda. It must be noted
that this cargo was thus subjected
to the leakage of the vessel from
the 19th of August 1855 to the 4th of
October 1855 a period of 46 days
when the "Wilmington" arrived
in Shanghai, where the cargo in
a very damaged condition was
taken out and sold at great
loss

loss to the owner.

I have thus fully restated this case and the testimony in the belief that its merits will be carefully and justly considered by Your Excellency. Indeed I had been led to infer in my interviews last year with His Excellency, Mr. Inouye, that the claim would ere this have received a favorable consideration by His Majesty's Government and that an equitable settlement thereof would have been made.

Having in mind the fact my Government after the lapse of nineteen years from the date of the Shimonoseki Convention refunded to that of Japan the sum of $785,000.00 for, the amount

amount which Japan had paid to the United States in accordance with the Convention of 1864, it was but reasonable that the Honorable Secretary of State of the United States in his instructions to me of date the 23rd of April last should make, as he did, the following remarks: "In view of "this act of friendly justice on our "part, it would seem fitting that the "Japanese Government in a like "friendly and just spirit should "consider and dispose of the claims "of Captain Brunn which has "hitherto been denied a hearing "on technical grounds aside from "its merits. To refuse consideration "of a complaint merely because "it is some twenty seven years old

(1. E. 1883)

"(i.e. 1883) is hardly the considerate
"course to be expected from a
"Government so friendly as is that
"of Japan.
"International courtesy and equity
"are not to be barred by an arbitrary
"statute of limitations. The lapse
"of time cannot prevent the Japanese
"Government from ascertaining the
"simple facts of the case, and if
"the Claimants statements are
"found to be correct, it is
"conceived that the upright
"spirit which so distinguishes
"that government will lead it to
"tender to Captain Browne such
"compensation for his losses as may
"appear adequate"

I sincerely hope

that

that this reasonable expectation of my government may not be disappointed and that a conclusion upon this complaint may at an early day be reached by Your Excellency which will be just alike to His Imperial Majesty's government to Captain Browne and to the government of the United States.

Pardon me for reminding you that this is the only unsettled claim of which I am advised, that my government has considered or presented against that of Japan.

For your convenience I beg leave to append here the following summary of the record evidence in

in this Case.

1. The extracts of the log book of the "Wilmington" verified under oath which shew conclusively that the Cargo of the "Wilmington" was greatly damaged by reason of the denial at Simoda by the Japanese Officials of Captain Browne's Treaty rights and also that by reason of the same unlawful acts his projected voyage to the North Pacific was broken up and made impossible.

2. The Extract of Capt. Browne's letter dated Oct. 29th 1855 to Mr. Murphy, the U. S. Consul at Shanghai stating the wrongs done him at Simoda.

3. Copy of Captain Browne's protest dated Nov. 24th 1855 filed by him with Mr. Consul Murphy and the

Consuls

Consul's certificate thereunto, and which protest and certificate were transmitted by Consul Murphy to the Department of State Nov. 27th 1855 wherein Captain Browne set forth the Japanese Government's refusal to grant him his Treaty rights, thereby breaking up the voyage of the "Wilmington" and causing a loss to himself and Thomas Filch Jr. (whose interest Captain Browne also represents by power of attorney) of $36000 and wherein he also invokes the aid of the United States government to take measures to recover his losses from the Japanese Government.

4. The sworn statement of Captain Browne dated 30th January 1880

Setting

setting out the injuries inflicted wrongfully upon him by the Japanese government and demanding from said government indemnity therefor, and shewing that he sold at Shanghai in 1855 his damaged cargo to the best advantage, and that after such sale his loss thereon by reason of the unlawful acts of the Japanese Officials, was $20,316 ^{xx}, which sum he claims, and which sum he declares is exclusive of interest paid on the cargo, of expenses of Captain and Crew and victualling the same and also exclusive of insurance of the vessel and Cargo / And does not include

you will please note any damage by reason of the breaking up of his voyage

5. The sworn statement of Gen. T. Filch of date 22 Janᵧ 1880 corroborating the testimony of Captain Browne.

6. Letter of Thomas Filch, 24th Janᵧ 1880 in corroboration of Capt. Browne's statement.

I respectfully submit the foregoing in the hope that this meritorious claim of Captain Browne will be considered on its merits by Your Excellency's government and that such equitable decision may soon be reached as the facts shown will justify and which in the opinion of His Majesty's Government may be an equitable reparation to Capt. Browne for his losses in the premises.

I avail myself of this occasion to renew to Your Excellency the assurance of my highest consideration.

(Sgd) Jno. A. Bingham

copy to War Dept. April 2. 84 enclosure

following

DEPARTMENT OF STATE
MAR 31 1884
RECEIVED.

No. 1827.

United States Legation

Tokio, Japan, Feby 29th 1884.

Mr. Brigham

To the Secretary of State

Subject

Daily Weather Reports of the Imperial Observatory at Tokio for February 1884

No. 1827. United States Legation

Tokei, Japan, 29th Feby 1884

Hon. Fredk T. Frelinghuysen

Secretary of State

Washington, D.C.

Sir:

Herewith I have the honor to transmit for the information of the Signal Service the daily weather reports for the month of February 1884, of the Imperial Meteorological Observatory at Tokio Japan.

I have the honor to be,

Sir,

Your obedient servant,

Jno A. Bingham

Enclosure under separate cover

Daily weather reports for Feby 1884

DEPARTMENT OF STATE
APR 28 1884
RECEIVED.

w/ Mr Brookhouse's

U. S. Legation, Japan.
Tokei. March 19th 1884.

Mr. Goward

To the Secretary of State.

Subject.

Acknowledging receipt of despatch relative to the detention of an exchange voucher in his account as bearer of despatches, with his regrets and explanation.

No. —

United States Legation,

Tokei. March 19th 1884.

Hon. Frederick T. Frelinghuysen.

Secretary of State,

Washington. D.C.

Sir:

I have the honor to acknowledge the receipt of the instruction of the Department, dated Feby 5th 1884. in which attention is called to the withholding of a duplicate exchange voucher touching my account as bearer of despatches.

I regret exceedingly that there should have been any delay in the receipt of duplicate exchange vouchers covering the balance allowed me by an instruction

instruction of date August 18th 1883.

My account as such bearer of despatches had already been sent as early as July 1883. I did not draw for the balance until my account had been approved and allowed. There being no loss or profit by the exchange on the draft for the said balance (₶102.55/100) I have been led to suppose that in such cases exchange vouchers were not absolutely necessary. I forwarded them, however, as usual. I cashed my draft for the amount of this said balance shortly after the receipt of instruction approving my account and authorizing me so to draw. This was on the 26th of Sept. 1883, the day of my departure for Corea on leave of absence. Upon my return I discovered at a late day my despatch had been neglected and not sent, through some oversight or misunderstanding. I am at a loss further to account for it and have only to renew my regrets at the delay.

I have the honor to be, Sir,
Your obedient servant.

Gustavus Goward

DEPARTMENT OF STATE
APR 28 1884
RECEIVED.

File

No. 1828.

United States Legation
Tokei, Japan, 21st March, 1884

Mr. Bingham
To the Secretary of State

Subject.
Receipt of Instructions 797 to 803 inclusive, Also Circular Instruction of date Jany 28th 1884.

No. 1828. United States Legation

Tokei, Japan, 21st March 1884.

Hon. Fred'k T. Frelinghuysen,

Secretary of State

Washington, D.C.

Sir:

I have the honor to acknowledge the receipt of Instructions numbered respectively 797, 798, 799, 800, 801 802 and 803, also Department Circular marked "Separate" dated January 28th 1884, directing me to obtain and forward all the information obtainable (and which is desired by the Honorable Secretary of the Treasury) in reference to the coinage, production, consumption import and export of the precious metals, paper and metallic circulation &c, affecting Japan, and especially such

such answers as can be obtained from this Government in reply to the several interrogatories propounded by the Secretary of the Treasury and embodied in the circulars and which apply only to the year 1883.

I have the honor to be,

Sir,

Your obedient servant

Jno. C. Bingham

DEPARTMENT OF STATE
APR 28 1884
RECEIVED.

Ack by mail 4 Feb

By mail

No. 1829.

United States Legation,
Tokei, Japan 24th March 1884

Mr. Bingham
To the Secretary of State

Subject.

Mr. Bingham has applied for information relative to Coinage etc of precious metals in Japan in accordance with Circular Instruction of 28th Jany 1884

No. 1829. United States Legation

Tokei Japan 24th March 1884.

Hon. Fredk. T Frelinghuysen.

Secretary of State

Washington D.C.

Sir:

Referring to Circular Instruction of date the 28th of January last relating to certain information desired by the Honorable Secretary of the Treasury concerning the Coinage &c of precious metals in Japan, I have the honor to acquaint you that on the 21st instant I addressed a note on the subject to His Excellency Mr. Inouye the Minister for Foreign affairs (a copy of which is herewith) wherein I enclosed, you will please observe, a copy of the Circular "

Instruction

Instruction and requested to be possessed, for the use of our Government; of the information desired at as early a day as might be convenient to His Excellency.

I have the honor to be,

Sir,

Your obedient Servant

Wm A. Bingham

Enclosure.

Mr. Bingham to Mr. Frelinghuysen

21st March 1884.

Enclosure No. 1 With Mr. Bingham's No. 182.

No. 2310. (Copy) United States Legation

Tokei Japan 31st March 1884

His Excellency

Inouye Kaoru

H. I. J. M's Minister for Foreign Affairs.

Sir:

I beg leave to invite your attention to the enclosed Circular Instruction of date the 28th of January last which has been addressed to me by the Honorable Secretary of State of the United States wherein your Excellency will please note that I am instructed at my earliest convenience to furnish to my Government all the information obtainable, in reference to the coinage production of Japan, also the consumption, import and export of the precious metals,

Japan

paper and metallic Circulation,
and all other information affecting
Japan, and also replies to the
several interrogatories of the Honorable
Secretary of the Treasury of the United
States as incorporated in the enclosed
Instructions, so far as the same apply
to Japan for the Calendar year 1883.
It is hoped that you may be pleased
at your earliest convenience to
furnish me with the several
and specific information called
for in the enclosed Instructions, that I
may transmit the same to my Government.
A like request, permit me to say, is
made by my Government of other Governments.
Accept the renewed assurances
of my highest consideration.

(Sgd) Jno A Bingham

Dept. of State Circular Instruction
enclosed to Mr. Inouye.

DEPARTMENT OF STATE
APR 28 1884
RECEIVED.

Judge Cuppy of Washn D.C. says he is atty of record & after having read Mr. Binghams former dispatch (not this which was sent unopened or misunderstood) he desires that further advices on the subject be communicated to him, Cuppy—

No. 830.

Legation of the United States

Tokei, Japan, 25th March 1884.

Mr. Bingham

To the Secretary of State

Subject—

The Wilmington Claim. Capt. W.R. Browne.

No. 1830. United States Legation

Tokei, Japan 25th March 1884.

Hon. Fredk T. Frelinghuysen

Secretary of State

Washington D.C.

Sir:

Referring to my No. 1826 of date the 24th ultimo, wherein I had the honor to enclose a copy of my dispatch dated the 28th of January, and addressed to the then acting Minister for Foreign Affairs, Mr. Ito, in relation to the claim of Captain M. R. Browne, late Master of the Schooner "Wilmington" I beg leave to say that on the 22nd inst. I had an interview on the subject with His Excellency Mr. Yoshida Vice Minister for Foreign Affairs, to whom the claim

has

has been referred for adjustment by His Excellency Mr. Inouye.

In this interview with me, Mr. Yoshida expressed a desire to compromise the claim, to which I made reply that I would be pleased to receive any proposition for settlement which his Government might be pleased to offer; and I further said, that in the instructions given on the subject, of which I had made special mention in my communications to the Foreign Office, you had expressed the expectation that Japan would in the same friendly spirit of justice heretofore manifested by our Government towards that of Japan, make such reparation

to

to Captain Browne as might be just and Equitable.

Mr. Yoshida spoke of the neglect of Captain Browne to give specific statements and bills of his cargo, of goods and supplies shipped by him, and alleged to have been damaged to the amount of $20,316.00 and also that he had failed to state what amount of insurance he had received on account of the damage done to the same.

I made reply that I thought the Log-book, protest, and affidavit, made by Captain Browne (of which he had copies), and which were approved of by the Department and accepted as true, ought also to be accepted by His Majesty's

Government

Government as true until Sawa
testimony shall be adduced to impeach
them; and further that Captain
Browne had stated his actual
net loss on the goods and stores,
not including charges of insurance,
or interest, or the wages of the seamen, &c.
and that I had no reason to suppose
he had received anything from
insurance upon goods and stores
and on account of his losses therefrom.

Mr. Yoshida did not seem to
insist upon a specific statement
of the items or the production of the
bills of the cargo and supplies
shipped and damaged. If Capt.
Browne, who I understand is Librarian
in the Naval Department, can
readily supply such statements and
bills

bills verified by his oath, and
also by further affidavits, make
a specific statement that the sum
claimed to net $20,316 was the
net loss thereon, and was occasioned,
as heretofore shewn, by the wrongful
acts of the Japanese officials in
the harbor of Simoda, Japan;
and that no part of said loss
has been paid to him as ~~+~~
insurance or allowance, it might
be advisable that he should do so,
to the end that I may make use
of the same in case this Government
shall insist upon such further
evidence. I beg leave to add,
that what is herein suggested by
me, is submitted for your consideration
and judgement, as to the need or
propriety

propriety of any further sworn statements of Captain Browne inasmuch as the statements heretofore made by him under oath and submitted to this Government have hitherto been deemed sufficient by the Department and are taken by me as conclusive of the question as stated in my note to the Foreign Office above mentioned

I have the honor to be,

Sir,

Your obedient servant,

Jno A Kasson

Acts Referred to Navy Dept. May 27 '84 Chandler

Copy to Navy Dept. as Inclosed May 27. '84 A.A.A.

DEPARTMENT OF STATE
APR 28 1884
RECEIVED.

Thurston-acctg Transmitted letter of Sept. 20. with Sept. enclosures

Hon Edward

No: 1631.

United States Legation Japan.

Tokei March 25th 1884.

Mr. Bingham

To the Secretary of State,

Subject.

The claim of Nagai Junske.

Received by the Japanese Government

No. 1831. United States Legation.

Yokei, Japan 25th March 1884.

Hon. Frederick T. Frelinghuysen,

Secretary of State,

Washington. D. C.

Sir:

Herewith I beg to enclose a translation copy of a note dated the 8th instant addressed to me by His Excellency Mr. Inouye, the Japanese Minister for Foreign Affairs, reviving the claim of Nagai Jinske for damages caused to his vessel the "Fukuniya Maru" by reason of a collision with the U. S. S. "Ashuelot" in August 1869.

You will please observe that the Minister states that he "should hesitate to revive the subject in view of the

"the expressed disinclination your
"(my) part to make further representations
"to your (our) Government, in connection
"with it were I (Mr. Inouye) not
"firmly convinced that an error
"has been made with reference
"to this case," and adds "which error
"I (the Minister) am sure it is only
"necessary to bring to the attention
"of the Government of the United
"States in order to secure its
"immediate correction."

I am constrained to say that upon a careful examination of the records of this Legation there was in my opinion an error made in the premises by our Government and that the error was made by the Navy Department to which

the

the subject was from time to time referred for a report.

A reference to my No. 162 of date December, 16th 1874, which I had the honor to address to Hon. Fish, as also to its enclosures will shew that the claim preferred by this Government in behalf of Nagai Junke was for damages caused by reason of a collision of his vessel the "Fukumuja Maru" with the U.S.S. "Ashuelot" in August 1869, and the damages claimed amounted to Yen 4.729.79 after deducting all that was recovered from the wreck. The greater part of the damages claimed was indirect damage, and of course is not to be allowed in any equitable settlement of the

claim

claim.

The report made to the State Department by Mr. Robeson enclosed by Mr. Fish to me in his instruction No. 130 of date, March 18th 1875 is I think explained and disposed of not only by what is stated by Mr. Inouye in his letter enclosed herewith but also by the enclosures with my No. 493, dated Jan'y 15th 1877, which I had the honor to transmit to Mr. Fish.

I beg to invite your attention to instruction No. 284 dated March 26th 1877 addressed to me by Mr. Evarts, enclosing letter from Mr. Secretary Thompson [Navy Department] of date March 22nd 1877 with an enclosure or statement of facts. You will

please

please observe that Mr. Secretary Thompson speaks of a Japanese junk which had collided with the "Ashuelot" and referring to his enclosed statement says "in the judgment of this Department [the "Navy] the owner of said junk has "already been fully indemnified for the loss "and damage which were ascertained as "per statement" from the log of the "Ashu-"elot" and by a survey made by a board "of Commissioners, to be ($25.00) Twenty-five dollars".

The statement expressly declares that this survey of the board of Commissioners was "as to a col-"lision of the U.S.S. "Ashuelot" with a Japanese junk "in August 1872."

It seems to me impossible to avoid the conclusion, that the survey made in 1872 at the time of a collision with a Japanese junk, not named, was not the collision which occurred in August 1869 between

between the Achuelot and the junk "Tukemmyakmank", the property of Nagai Jiuske as reported with my Nos. 162 & 493 above mentioned and that no damages whatever have been paid on account of the collision with his vessel in 1869, to the owner thereof Nagaijuske

A reference to instruction No. 130 from Mr. Fish to me under date March 18th 1875, enclosing letters of Sec Robeson with statement of an officer of the Achuelot and an extract from the log will show as Mr. Inouye states in his enclosed letter herewith, that Mr. Robeson's conclusions were not conclusive, of the question in the light of the testimony of the claimant transmitted to the Department with my Nos. 162 and 493, before mentioned.

I only bring the matter again to your attention in compliance with Mr. Inouye's request.

I have the honor to be, Sir,

Your obedient servant.

Wm A. Bingham

Enclosure. Mr. Inouye to Mr. Bingham, dated March 8th 1884.

Enclosure No 1. With Mr Binghams No 1831.

Translation Copy

No 11. Foreign Office, Tokio,
March 8th 1884.

His Excellency
John A Bingham
Envoy Extraordinary and Minister
Plenipotentiary of the U.S.A.

Sir:

I have had the honor to receive Your Excellency's Note of the 8th of May last in reference to the claim of Nagai Jinske, for damages caused to his vessel the "Fukumija Maru" by reason of a collision with the U.S.S. "Ashuelot" in August 1869.

I should hesitate to revive the subject of this claim, in view of the expressed disinclination on your part-

part to make further representations
to Your Government in connection
with it, were I not firmly convinced
that an error has been made with
reference to this Case, which is injurious
alike to the rights and interests of
the Claimant, which moreover, I am
sure it is only necessary to bring
to the attention of the Government of
the United States in order to secure
its immediate Correction.

Your Excellency will not fail
to recollect that the claim of Nagai
Jinske was first presented to the
U. S. Government in the Communication
from this Department dated the
14th of the 12th month 4th year of Meiji.
The Statements then forwarded,
after explaining in a clear and
satisfactory

satisfactory manner the reasons which had united in causing a delay in the presentation of the claim, expressly declared that the "Fukuniya Maru" was, while at anchor, and in broad daylight, run into by the U.S.S "Ashuelot"; and that she was so damaged by the collision that she subsequently sunk together with her cargo consisting of 68½ tons of coal.

The answer of the Secretary of the Navy of the United States to these statements, which Your Excellency transmitted to this Department, in your note of the 16th June, 1875, denied that the "Fukuniya Maru" was at anchor at the time of the occurrence

occurrence, and asserted "that the
"Junk was observed [by the officers
"of the Ashuelot") with aid of glasses
"for some time afterwards, until
"she passed out of sight behind
"a point of land," and that neither
"the Captain nor the officers of the
"deck believed, or had any reason
"to believe, that the Junk had
"received more than trifling damage;"
resting his decision upon these
declarations the Secretary rejected
the claim.

A careful perusal of these several
documents will, I am persuaded,
be sufficient to convince Your
Excellency and the Government
You represent, that the evidence
upon which the Secretary of the
Navy

Navy acted was by no means conclusive, as it was based solely upon the opinions of the officers of the "Ashuelot"; which opinions, in turn necessarily rested upon imperfect data, as the "Ashuelot" did not stop to ascertain the extent of the damage to the junk, or the resulting consequences of the collision, but assumed from the fact that the "Fukumiya Maru" kept afloat for some time after the accident that the "damage was trifling.

Notwithstanding the impressions which the decision of the Secretary of the Navy gave rise to, the determination of Your Excellency's Government was communicated by this Department

to

to the Claimant, and he at no little trouble and expense procured declarations from Generals Officers and a large number of other people who were cognizant of the facts which he had alleged in his original statement.

The General declarations were transmitted to Your Excellency by this Department on the 12th of the 1st month, 10th year of Meiji (1877), and I cannot doubt Your Excellency will agree with me, that so far as the facts upon which the right of the Claimant to expect proper indemnification from the United States Government are concerned, they are conclusive.

Those facts are; 1st that the

"Fukumiya

"Fukumiya Maru" was at anchor at the time of the accident-, and 2nd that the sinking and loss of the vessel and her Cargo were the direct result of the Collision.

In Reply to the last named Communication, Your Excellency on the 30th September 1879 transmitted to this Department a Copy of a Statement from the Navy Department regarding, it was supposed at the time, the occurrence now under discussion; the Caption of which reads as follows: "Statement of facts to "accompany the letter of the Secretary "of the Navy to the Secretary of State, "dated March 22nd 1877, as to the "Collision of the U.S.S. "Ashuelot" with

"with a Japanese junk in
"August 1872"

The statement, among other things, stated that it appeared "that "the collision, slightly damaged "the junk, that the "Ashuelot" towed her into harbor, that a careful survey was made by a board of Commissioned Officers of the "Ashuelot", assisted by the Japanese "pilot of that vessel, and in the "presence of the owner of the junk, "and that the entire damage "to the junk, estimated at $25.00 "was then and there paid to the "said owner", who "was well satisfied with this payment."

The Claimant has repeatedly denied the assertions contained in

in the statement referred to, and these denials have been forwarded to Your Excellency, but the utter and irreconcilable conflict existing between the two Reports emanating from the Navy Department was not at the time observed, neither was it noticed that the statement which accompanied Your Excellency's note of the 30th September 1879, referred specifically to a collision which took place in August 1872, and not in August 1869.

A careful re-examination of the case, however, has led to the discovery that the "Ashuelot" had two collisions with Japanese vessels, one in August 1869, when

Commanded

Commanded by Commander —
Robert F Bradford, and the
other, in August 1872, when
under command of Commander
Rush R. Wallace.

The first was with the "Pekin
Maru", in respect of which
the present claim was preferred;
With regard to the collision which
took place three years later,
this Department is not possessed
of any accurate information, as
it was not made the subject
of official inquiry in view of
the fact that the damages occasioned
thereby were forthwith paid to
the owner of the vessel.

The payment in the latter cases has,
however, been erroneously urged,
as

as a bar to the claim in respect of the first occurrence,

This is the error which I desired to point out to Your Excellency, The long delay which it has occasioned in the settlement of what I am persuaded, is a just and equitable claim, and the great injury and hardship which that delay has caused Nagai Jinske, who was dependent upon the earnings of his vessel for a livelihood, are circumstances, which I cannot doubt, will exercise a powerful and favorable influence upon the final determination of Your Excellency's Government,

In

In requesting Your Excellency
once more to bring the subject
to the attention of the U.S. Government
I beg to renew to You the assurance
of my highest consideration.

(Sgd)

Inouye Kaoru

H.I.J.M's Minister for Foreign Affairs

Received by mail

DEPARTMENT OF STATE
APR 28 1884
RECEIVED.

H Wang

No. 1832.

United States Legation, Japan
Tokei. March 26th 1884.

Mr. Bingham
To the Secretary of State,

Subject.

Postal Convention between Japan and the United States. in re Consular Pouch for Kanagawa Consulate General.

Negotiations to be renewed at as early a day as possible.

No. 1832. United States Legation.

Tokei, Japan. 26th March, 1884.

Hon. Frederick T. Frelinghuysen,

Secretary of State,

Washington, D. C.

Sir:

Referring to your instruction No 802, I beg leave to say that I will at an early day renew my negotiations with this Government for a new draft postal Convention with Japan, providing for closed Consular mail pouches between the United States and Kanagawa in accordance with the suggestions made by Mr. Howe, late Post Master General which were transmitted to me with Your instruction No 710 of date the 7th of Feb'y 1883.

Sometime after the receipt of the instruction last named I verbally

Communicated

communicated to the Foreign Minister the substance of the instruction and Mr. Howe's suggestions and was referred to the Post Master General Mr. Nomura, who, when I called his attention to the subject, said he would inform me whether any convention other than that, the draft of which I had the honor to transmit to you with my No. 1597, dated Nov. 27th, 1862, would be acceptable to his government.

I have not since heard from the Post Master General and had concluded that it was not agreeable to him to make any departure from what had been heretofore assented to by his Government.

I apprehend that the most favored

favored Nation clause (Art. III) of the draft convention of 1882 to which Mr. Howe took exception in his letter to you of January 31st 1883. was insisted upon by this Government on account of the like provision in the Japanese Postal Convention with Great Britain.

As soon as I can possess myself definitely of the mind of His Majesty's Government on the subject I will fully advise you.

I have the honor to be,

Sir,

Your obedient servant,

Mc A. Bingham

DEPARTMENT OF STATE
APR 28 1884
RECEIVED.

Rec'd Apr. 30. 1st Cipher

Confidential

Dr Ming

No. 1833.

United States Legation, Japan,
Tokei, March 26th 1884.

Mr. Bingham
To the Secretary of State,

Subject.

Return of Admiral Enomotto to China shortly expected.
Interview between Mr. Inouye and Mr. Bingham.

Confidential

No. 1833. United States Legation.

Tokei, Japan, 26th March 1884.

Hon. Frederick T. Frelinghuysen,

Secretary of State,

Washington, D.C.

Sir:

Having in mind the suggestions in your two instructions to me, of date the 23d of January last, and numbered 798 and 799 respectively and marked "confidential", at a personal interview with His Excellency Mr. Inouye on the 22nd instant, I took occasion to make mention of the reports in certain unfriendly journals of the East that a Japanese force had been sent to co-operate in Tonquin with the French against China and further that I was

apprehensive

apprehensive that these reports coupled with the fact of the sudden return of Admiral Enomotto to Japan might possibly affect unfavorably towards Japan, the government of China and be the cause of some unpleasant complications between the two countries; I further said to Mr. Inouye that I had been advised and was of the opinion that Admiral Enomotto had made a good impression in China and that in a recent conversation with the Admiral since his return to Tokei I ventured to enquire of him how soon he expected to return to his post in Peking to which he had replied that he did not know the pleasure of his Government on the subject or whether he would return

or

5

or not, and that I had made answer to Mr. Enomotto that I did hope that he might go back to China as it was all important in the present state of affairs in that Country that there should be a good understanding between China and Japan.

After making the statements to Mr. Inouye above recorded and after reporting to him my conversation with Enomoto, I ventured to ask Mr. Inouye what ground there was if any for apprehending what had been so often suggested in the English journals at Yokohama of preparations for war on the part of Japan with China, and that the relations between the two

countries

countries were becoming very much strained; Mr. Inouye answered me that there was no ground for any of the reports referred to, that Japan entertained the most cordial good will towards China, and that there existed at present a good understanding between the two countries, and that Admiral Enomotto would as soon as he arranged some private affairs return to Peking probably within the current or succeeding month. The minister upon my suggestion said I was at liberty to communicate these statements of his confidentially to our government, and also especially requested that I should communicate them to our

Minister

Minister in China which I will do by the outgoing mail of next week.

I have no doubt whatever that Admiral Enomoto will very soon, say within a month, return to Peking, and that a good understanding will be maintained between China and Japan whatever may be the result of the present complications between France and China.

I have the honor to be,

Sir,

Your obedient servant,

Mc A. Singhams

accdg to file

DEPARTMENT OF STATE
APR 28 1884
RECEIVED.

H Mug
Mr Trecklhoefe

No 1834.

United States Legation, Japan.
Tokei. March 26th 1884.

Mr. Bingham
To the Secretary of State.

Subject.

Acknowledging the receipt of instruction approving the renewal of the original Contract of lease for the Court House and Jail for the use of the United States in Tokei. Japan.

No 1834. United States Legation.

Tokei, Japan March 26th 1884.

Hon. Frederick T. Frelinghuysen.

Secretary of State,

Washington, D. C.

Sir:

I have the honor to acknowledge the receipt of Your instruction No. 797, dated the 23d of January last wherein you were pleased to approve the renewal made by me with Mr. John F. Twombly on the 21st of December last for two yeans from March 15th 1884 of the original contract of lease executed by that gentleman with me on the 8th day of December 1881 for a Court House and Jail for the use of the United States in Tokei.

I -

I have the honor to be,

Sir,

Your obedient servant,

Jno. A. Bingham

DEPARTMENT OF STATE
APR 28 1884
RECEIVED.

Brings
& Mr Kirchhoffer

No. 1835.

United States Legation, Japan.
Tokei, March 26th 1884.

Mr. Brigham
To the Secretary of State.

Subject.

Notice of draft made on the Secretary of State, dated March 15th 1884. amounting to $3400.00 for rent of Court House and jail. Tokei Japan.

No. 1835. United States Legation.

Tokei Japan March 26th 1884

Hon. Frederick T. Frelinghuysen.

Secretary of State.

Washington, D. C.

Sir:

Referring to the Contract of lease made with your approval by me on behalf of the United States with Mr. John F. Twombly on the 8th day of December 1881, I beg leave to acquaint you that in accordance with the terms of said lease I have drawn my bill of Exchange on you to the order of John F. Twombly dated the 15th instant payable fifteen days after sight for the sum of Thirty-four hundred ($3400.00) dollars

in

in full payment of the rent due on that day under said contract for rent of Court House and Jail in Tokei, Japan.

I have the honor to be,

Sir,

Your obedient servant,

Wm A Kingham

DEPARTMENT OF STATE
APR 28 1884
RECEIVED.

Dispatches from U.S. Ministers to Japan, 1855-1906
Vol. 24
Oct. 1883 - Oct. 1884

Mr. Ring

No. 1836.

United States Legation, Japan.
Tokei, March 27th 1884.

Mr. Bingham.
To the Secretary of State.

Subject.
Receipt of Volumes I & II of the Tenth Census of the United States
Thanks of the Japanese Government for a copy of the same.

No. 1836. United States Legation.

Tokei, Japan. March 27th 1884.

Hon. Frederick T. Frelinghuysen,

Secretary of State,

Washington. D.C.

Sir:

Referring to my No. 1824 of date the 26th ultimo wherein I had the honor to advise you of the non-receipt of two copies of volume ~~II~~ II of the tenth (10th) Census of the United States, viz: ~~.....~~ the Statistics of Manufactures, Vol II, I beg leave to say that in accordance with the request of the Honorable Secretary of the Interior, I, having since received the same made delivery to His Imperial Japanese Majesty's Government of one copy of the work

work and beg leave to enclose herewith for your information and also for the information of the Honorable Secretary of the Interior, a translation copy of the letter of His Excellency, Mr. Ito, of date the 19th of January last ac acknowledging the receipt of Vol. I, and a translation copy of the letter of His Excellency, Mr. Inouye, His Majesty's Minister for Foreign Affairs acknowledging the receipt of Vol. II.

In these two letters you will please observe that the thanks of this government are tendered to the Honorable Secretary of the Interior for the two volumes respectively.

I have forwarded formal receipts to the Honorable Mr. Teller for each volume and beg leave to say that the

Copy

copy sent by the Honorable Secretary for this Legation through your favor, I have marked "the property of the United States," and have placed the same in the Library of this Legation.

With thanks to the Honorable the Secretary of the Interior and also to yourself.

I have the honor to be,

Sir

Your obedient servant,

Jno A Bingham

Enclosures. (2)

No. 1. Mr. Ito to Mr. Bingham.
dated Jan'y 19th 1884.

No. 2. Mr. Inouye to Mr. Bingham.
dated March 17th 1884.

Enclosure No 1. With Mr Binghams No. 1836

Translation Copy. Foreign Office

No 12. January 19th 1884.

His Excellency

Jno. A. Bingham

&c &c &c.

Sir:

I have the honor to acknowledge the receipt of Your Excellency's Note dated the 4th inst. transmitting a copy of the Statistics of Population of the United States of the tenth census, which was forwarded to You by the Honorable Mr. Teller, Secretary of the Interior of the United States for presentation to my Government.

I beg leave to tender to Your Excellency and to the Honorable the

Secretary

Secretary of the Interior, the thanks of my Government for the valuable Report.

I avail myself of this occasion to renew to Your Excellency the assurance of my highest consideration.

(Sgd) Ito Hirobumi, Sangi
Acting Minister for Foreign Affairs.

Enclosure No. 2. With Mr. Bingham's No. 1836.

Translation Copy Foreign Office, Tokio,

No. 13. March 17th 1884.

His Excellency

John A. Bingham

&c &c &c

Sir:

I have the honor to acknowledge the receipt of Your Excellency's note dated the 10th instant, transmitting a copy of the Second Volume of the Census of the United States of America for the Year 1880, entitled Statistics of Manufactures, Products &c, of the United States which was forwarded to You by the Honorable the Secretary of the Interior of the United States for presentation to my Government.

I

I beg leave to tender to Your Excellency and to the Honorable the Secretary of the Interior, the thanks of my Government for the valuable Report.

I avail myself of this occasion to renew to Your Excellency the assurance of my highest consideration.

(Sgd) Inuyekawa

H. I. J. M's Minister for Foreign Affairs

DEPARTMENT OF STATE
MAY 5 1884
RECEIVED.

Forwarded May 9th 1884

Mr. Edwards

No. 1837.

United States Legation
Tokei, Japan. April 4th 1884.

Mr. Bingham

To the Secretary of State.

Subject-

Japanese Weather Reports for March 1884.

No. 1837. United States Legation,

Tokei Japan, Apl. 4th 1884.

Hon. Fredk. T. Frelinghuysen,

Secretary of State

Washington D.C.

Sir:

Herewith I have the honor to transmit for the information of the Signal Service the daily weather reports, for the month of March 1884, of the Imperial Meteorological Observatory at Tokio, Japan.

I have the honor to be,

Sir,

Your obedient servant

M. A. Swinburne

Enclosure under separate cover.

Daily Weather reports for March 1884.

DEPARTMENT OF STATE
MAY 5 1884
RECEIVED.

Acd by mail

Mr Edwards

No. 1836.

United States Legation, Japan.
Tokei, April 7th 1884.

Mr. Bingham

To the Secretary of State.

Subject.

Notification of the Japanese Government relative to the adulteration of tea. Measures adopted for its prevention.

Copied May 1884.

No. 1838. United States Legation.

Tokei, Japan, April 7th 1884.

Hon. Frederick T. Frelinghuysen.

Secretary of State.

Washington, D.C.

Sir:

I have the honor to enclose for your information a translation copy of Notification No. 4 of the Imperial Government of Japan as published in the Japan Weekly Mail of the 3th ultimo together with a translation copy of the Bye-Laws therein mentioned and conformity to which you will please note is expressly enjoined by the Government upon all persons engaged in the tea trade and are also required to report the establishment of Tea Guilds to the

the Agricultural and Commercial Department.

It is to be hoped that Art. III. of the bye-laws may put an end to the adduleration of teas in Japan which has of late been the subject of complaint both here and in the United States.

I have the honor to be,

Sir.

Your obedient servant,

Jno A Bingham

Enclosure.

Extract from Japan Weekly Mail March 8th 1884.

NOTIFICATION NO. 4 OF THE IMPERIAL GOVERNMENT.

To Cities and Prefectures.

Whereas: there is a quantity of coloured, impure, and otherwise adulterated tea in the market, not only interfering with legitimate trade, but injurious to the public health, those engaged in the tea trade are ordered to conform with the following bye-laws, and to report the establishment of Tea Guilds to the Agricultural and Commercial Department.

Bye-laws concerning Tea Guilds.

Art. I.—Those engaged in the tea trade, be they producers or sellers, must establish Tea Guilds in each of the urban or rural wards in which they reside.

N.B.—The production of tea for individual consumption does not come under these bye-laws.

Art. II.—The Guilds shall bear the name of the prefecture, city, urban, or rural ward in which they are established.

Art. III.—The Guilds shall frame rules with a view to achieving the following objects:—(1) that tea adulterated with bad and impure stuff shall not be manufactured; (2) that tea-leaves shall be properly fired and packed; (3) that the names of the producers and, or, sellers shall be marked on every package.

Art. IV.—Every Guild shall appoint a Committee to regulate and manage its own affairs.

Art. V.—The members of a Guild must be furnished with certificates proving their membership. These certificates must bear the stamp of the local authorities.

Art. VI.—A Committee shall examine into, and report upon, the condition of all the Guilds.

Art. VII.—A head Guild for the supervision and control of all other Guilds shall be established in each prefecture.

Art. VIII.—The officers of the head Guild shall be elected by vote from among the members of the subordinate Guilds.

Art. IX.—The expenses consequent upon the maintenance of the head and sub-Guilds shall be mutually determined by all the Guilds.

Art. X.—Each Guild shall be at liberty to frame such rules as may be considered expedient for the attainment of the above objects.

Yamagata Aritomo,
Home Minister.

Saigo Yorimichi,
Minister for Agriculture and Commerce.

March 3rd, 1884.

Copy to P. M. Gen'l, referring to his letter on the subject. May 14. 1884 cr'd.

Ack'd and S. to J. for speedy communication. May 14. 84 cr'd

DEPARTMENT OF STATE
MAY 5 1884
RECEIVED.

No. 1639.

Mr Edwards

United States Legation Japan.

Tokei, April 7th 1884.

Mr. Bingham.

To the Secretary of State.

Subject.

Report of progress in the negotia-tion for Consular Pouches between Japan and the United States.

No. 1839. United States Legation.

Tokei Japan, April 7th 1884.

Hon. Frederick T. Frelinghuysen.

Secretary of State,

Washington, D. C.

Sir:

Referring to my No. 1832 in relation to your further instruction concerning the negotiation of a postal convention with this Government for the exchange of closed Consular mails between the United States and Japan, I beg leave to inform you that on the 4th instant I sought and obtained an interview on the subject with the Assistant Minister for Foreign Affairs by whom the subject had heretofore been considered and fully explained to

him

him the objections of my government as expressed by Mr. Howe, late Post-Master General to the draft hitherto presented by this Government.

Mr. Yoshida signified his readiness to bring the matter to the consideration of the Postmaster General at an early day and report the result to me.

I trust that I may be able to obtain from this Government a Draft Convention substantially in accord with your Instructions.

I have the honor to be,

Sir,

Your obedient servant.

Jno. A Singhum

Mr Edwards
1
Mr Frelinghuysen

No. 1840.

United States Legation, Japan
Tokei, April 7th 1884.

Mr. Bingham.
To the Secretary of State.

Subject.
Accounts for the Quarter
ending March 31st. 1884.

No. 1840. United States Legation.

Tokei, Japan 7th April, 1884.

Hon. Frederick T. Frelinghuysen.

Secretary of State

Washington, D. C.

Sir:

Herewith I have the honor to transmit my account for salary for the first quarter of the current year which shews that on the 31st ultimo, I drew upon Messrs Morton, Rose & Co, London, for £616-9-2 sterling and that I received therefor at the current rate of exchange the equivalent of $3000.00 U.S. gold and no more, as shewn by the Banker's certificate herewith.

I also transmit herewith my separate account for contingent

Expenses

expenses for the 1st quarter of the current year together with the vouchers therefor.

You will please note that I drew on the 31st ultimo, my bill on said Bankers, London, for £ 41.1.11 sterling on account of Contingencies for said quarter, and received therefor at the current rate of Exchange as

4/ per Bankers' Certificate herewith the equivalent of two hundred dollars, U. S. gold and no more. and that in my account herewith for contingencies I credit the Government with said sum of $200.00 U. S. gold and also with the further sum of $39.64 balance in my hands as shewn by my account for

Contingencies

contingencies for the fourth
quarter of the year 1883.

You will also please note that
I debit the Government on account
of Contingent expenses paid by me
for the first quarter with
the sum of $108.48 U.S. gold
as shewn by the several vouchers
herewith marked respectively Nos
1 — 5 and that this amount
so expended by me being deducted
from said sum of $239.64 above
mentioned leaves in my hands
unexpended a balance of $131.16
to be accounted for and set to
the credit of the Government in
my contingent account at the
close of the second quarter of
the current year.

A

I have the honor to be,

Sir,

Your obedient servant,

Wm A Bingham

Enclosures. 4.

No. 1. Salary account for Quarter ending March 31st 1884.

No. 2. Voucher (Exchange) for same.

No. 3. Account for Contingent expenses for quarter ending March 31st 1884

No. 4. Exchange Voucher for same.

No. 5 - Sub-Vouchers Nos 1 — 5.

DEPARTMENT OF STATE
MAY 5 1884
RECEIVED

No 1841. Legation of the United States

Tokio Japan, April 7th 1884.

Mr. Bingham

To the Secretary of State

Subject.

Transmitting publications in Japanese relating to Medical Education Sanitary Laws etc of Japan, together with translations in part of the same.

No. 1841. United States Legation

Tokei, Japan 4th April 1884.

Hon Fred'k T. Frelinghuysen,

Secretary of State

Washington D.C.

Sir:

Referring to my No. 1790 of December 21st, 1883, in response to your Instruction No. 757, and in further answer thereto; I have the honor to enclose herewith, for transmission to Colonel John S. Billings, U.S. Army, translations in whole or in part, made by Mr. Whitney, of twenty nine volumes (the originals of which are enclosed) in relation to Medical Education, Japanese Sanitary Laws, quarantine laws & general publications and Reports Concerning public health etc.

I also enclose for the same purpose an

official

official publications in English and Japanese of the Imperial University of Tokio, entitled, The Calendar of the Department of Law, Science and Literature for 1880-81; also duplicates of the Fourth Annual Report in English of the Central Sanitary Bureau of the Home Department of the Japanese Government, from the 1st July 1878 to the 30th of June 1879.

You will please observe that the Index hereunto, includes all the documents enclosed with my No. 1790 as well as the printed documents hereunto, and that there is also an Index annexed to the enclosed translations made by Mr. Whitney.

I have the honor to be, Sir,

Your obedient servant.

Jno. A. Bingham

Enclosures (1) Translations with index.
(2) Empty nine Volumes, Reports etc. with
(2) Three volumes reports etc English
(3) Index of pamphlets etc forwarded.

Enclosures No 2 Separate

Enclosure No. 1 with Mr. Binghams No. 1841.

List of translations.

Medical Education

1. Seventh Annual Report. Medical Department University of Tokio. 1880. abstract translation	Page 3
2. Catalogue Medical Department University of Tokio 1882-3	15
3. Catalogue. Medical Department University of Tokio 1880-1.	
Maps & Plans of Hospital & College etc.	21
Existing Regulations respecting Public health etc.	
4. Establishment of State and Metropolitan Sanitary Boards-	25
5. Examinations of Candidates for licenses to practice Medicine, dentistry &c.	33
6. Cremation. location &c.	45

7. Prevention of infectious diseases. 49

8. Inspection of vessels arriving from ports infected with Cholera. 61

For translations of other important laws and regulations see published Reports of Sanitary Bureau (English translation) Nos 1, 2, 3 & 4.

Publications of the Sanitary Bureau

9. Sanitary Journal Nos. 1-38 inclusive indexed in full- 67

10. Notifications of the Sanitary Bureau 1 to 40 - indexed in full - 79

11. Statistical Tables, Births, Marriages and deaths in cities towns & villages 83

Tables Nos 1-5 translated.

DEPARTMENT OF STATE
MAY 5 1884
RECEIVED.

Act'g
May 16.
Wm Evarts
Mr Blaine to see
May 16. 84
Mr Blaine

Mr Edwards

No. 242. United States Legation

Tokei, Japan, 4th Apl. 1884.

Mr. Bingham

To the Secretary of State

Subject

Storage of Explosives at Yokohama;
reduction of Charges to 4 Sen silver
per cubic foot-permonth.

No. 1842. United States Legation

Tokei, Japan, 7th April 1884.

Hon. Fredk T. Frelinghuysen

Secretary of State

Washington D.C.

Sir:

Referring to my No 1807 of date the 19th of Feby last in relation to the Government Regulations for the Storage at Yokohama of Gunpowder and other explosives and the rate of Storage thereof per month as therein declared, I now have the pleasure to inform you that on the 22nd ultimo His Excellency Mr Inouye addressed an additional note to me on the same Subject (a copy of which is enclosed) wherein he states that upon a further consideration of the subject his Government have

have decided to reduce the rate of the Storage Charges provided in said Regulations to four (4) sen silver per cubic foot.

In accordance with the request made by Mr. Inouye that I should communicate this reduction to my Colleagues, I have the Honor to say that I did communicate the same to my several Colleagues by a circular note of date the 22 March last which has been returned to me with their several signatures thereto (a copy of which is enclosed) indicating their concurrence with me as therein expressed in the modification of the rate of Storage as above stated.

I have the Honor to be, Sir,

Your obedient servant

Wm. A. Bingham

/2

Enclosures (1) Mr. Inouye to Mr. Bingham March 22/84.
(2) Mr. Bingham to Foreign Representatives March 22nd 1884

Enclosure No. 1 With Mr. Bingham's No. 1842.

Translation. Foreign Office, Tokio,

No 14. March, 22nd, 1884.

His Excellency

John A. Bingham,

Envoy Extraordinary and Minister

Plenipotentiary of the United States

of America.

Sir:

I have the honor to acknowledge the receipt of Your Excellency's note dated the 8th ultimo, which was addressed to His Excellency Mr. Ito, and in which you acquaint him that you and your several Colleagues with one exception, had concurred in the views which I had the honor to express in my note of the 28th December last, addressed to

the

the Foreign Representatives Concerning
the Regulations for the Storage of
Explosives at Kanagawa Ken.

I beg leave to inform you
that after further Consideration
upon the subject, it has been
decided to reduce the rate of
the Storage Charges provided
in the Regulations to Four (4) Sen
silver per cubic foot, and
respectfully request that Your
Excellency will be good enough
to Communicate to Your Colleagues
this reduction of the rate.

I trust that the said Modification
will not fail to do away with
any objection which may exist
on the part of the Foreign Representatives,
so that the same may be immediately
Carried

Carried out.

I avail myself of this occasion to renew to Your Excellency the assurance of my highest Consideration.

(Sgd) Inouye Kaoru

H.I.J.M's Minister for Foreign Affairs.

Enclosure No. 2. with Mr. Binghams No. 1842.

Copy. United States Legation,

No. 1468. Yokei, Japan 22nd Mch. 1884.

My dear Colleagues:

I have the Honor to enclose herewith, for your information, a copy of a note addressed to me, of current date, concerning a reduction of the storage charges upon explosives, as prescribed by the Regulations of His Majesty's Government, concerning which you were pleased to unite with me in a collective note addressed to His Excellency Mr. Inouye, of date the 6th of November last.

You will please observe that Mr. Inouye in the enclosed note

acquaints

acquaints me that" after further
"consideration of the subject it has
"been decided to reduce the rate of
"the storage charges provided in
"the Regulations to four (4) sen
"silver per cubic foot," and
expresses the hope that this modi-
fication may meet the approval
of the Foreign Representatives.

Not unmindful of the approval
of Mr. Ito's note of the 28th of
December last, as expressed in
our collective note of the 11th of
January last, all of the Foreign
Representatives (except the Honorable
Mr. French) having concurred therein,
it seems to me but reasonable
that the reduction of the rate now
proposed by Mr. Inouye should
be

be accepted by the Foreign Representatives as satisfactory.

I beg leave to renew to you my dear Colleagues the assurance of my highest consideration.

(Sgd) Jno. A. Bingham

(Enclosure - Mr. Monroe to Mr. Bingham March 22nd 1824. See Enclosure No 1 with Mr. Bingham No 1842 to Dept of State.

Addressed His Excellency

le. de Grote Belgian Minister

and the other several Foreign Representatives and concurred in by the same

DEPARTMENT OF STATE
MAY 5 1884
RECEIVED.

Mr Edwards
+
Mr Kreckhoefer

United States Legation, Japan,
Tokei, April 7th 1884.

Mr. Goward

To the Secretary of State.

Subject.

Salary account for the quarter ending March 31st 1884.

United States Legation

Tokei, Japan. April 7th 1884.

Hon. Frederick T. Frelinghuysen

Secretary of State.

Washington, D. C.

Sir:

I have the honor to enclose herewith my account for salary for the quarter ending March 31st 1884 at the rate of $2500.00 per annum amounting to £128.8.7 for which sum I have drawn upon Morton Rose & Co London, by two drafts, one dated Feb. 2d 1884 amounting to £50, and the other dated March 31st 1884. amounting to £78.8.7, which said drafts are supported by an exchange voucher accompanying my said account

I have the honor to be,

Sir.

Sir,

Your obedient servant,

Gustave Gouard

Secretary of Legation.

Enclosure.

Salary account for the quarter ending March 31st 1884.

DEPARTMENT OF STATE
MAY 5 1884
RECEIVED.

Not to be sent to file

Mr Edwards

No 1643.

United States Legation, Japan.
Tokei, April 8th 1884.

Mr. Bingham.
To the Secretary of State.

Subject.
Letters of "Asiaticus" in the London News in regard to the question of treaty revision with Japan & strongly favoring the same.

No. 1843. United States Legation,

Tokei, Japan. 8th April, 1884.

Hon. Frederick T. Frelinghuysen,

Secretary of State,

Washington, D. C.

Sir:

There appeared in the London News, dated respectively, the 22nd of January and the 5th of February last two articles, the first entitled "Our commercial relations with Japan" and the latter entitled "Japan and the Western Powers" contributed by a correspondent over the signature of "Asiaticus". These several articles were republished in the Japan Daily Mail at Yokohama on the 15th and 27th ultimo, copies of which are herewith enclosed. 1/ 2/

The

The appearance of these articles in a great English journal and manifestly from the pen of a highly intelligent and fair minded Englishman excited to burning heat the choler of the Editor of the Japan Herald who could find no better reply to the articles than to charge without knowledge of the authorship of the articles that Japanese money had touched his palm and that His Excellency Mr. Inouye, His Majesty's Minister for Foreign affairs, had inspired and paid for these contributions to the News. It is the usual method of the Herald to charge that his contemporaries as well as myself are governed exclusively by mere personal and mercenary purposes in favoring such a revision of the existing oppressive Treaties between

between Japan and the Western Powers as will restore to Japan her rightful sovereignty. It is too late for a mendacious Editor to charge men of sense and probity with mere mercenary motives when they assert the accepted truth of this advanced age, that the inherent rights of men and nations are entitled to decent respect and consideration.

The article entitled "Our Commercial Relations with Japan" states fairly and in the main with accuracy the wishes and needs of this people. It declares that there is "a great and growing "restlessness" in the national mind of Japan" on the question of making large changes" in the Treaties "which bind her to the Western Powers, and adds that

no

" no political question is regarded in Japan
" so anxiously not only by the Courtand
" Cabinet but by the native Press and
" all educated society of Japan."

It refers to the effort made for treaty revision in 1871 when Iwakura, a noble and statesman of great ability, headed an imposing Embassey to Europe and America to obtain Treaty revision, and that her reasonable requests were disregarded. That the time has come when there is no longer even colorable excuse for subjecting Japan to the harsh and humiliating conditions that are applicable only to inferior or ill governed nations is patent to the Contributor of the London News as it is to all who know the great advance-ment made by this people.

The

The writer has had the courage, I am pleased to say, to proclaim this to the people of England. In his last communication the writer points out the fact that while it is the legitimate as it is clearly the inherent right of this Government to enforce its laws as well as to adopt and carry out a policy promotive of the welfare of its people, both these rights have under existing treaties been denied to Japan and the authority of its laws absolutely and openly disregarded by foreigners resident in the country.

The extra territoriality asserted over Japan is happily expressed to mean in practice that "except in civil cases "where the defendant is a native, &

foreigners

"foreigners are exempt from Japanese
"jurisdiction of every kind" and that
"Japanese laws are as a rule ~~x~~
"ignored by all but one or two of the
"foreign representatives." "In a word
"he says the foreigner "enjoys extra-terri-
"-torial immunities, he laughs at native
"laws, he pays no Taxes, and he is at
"liberty to work his sweet will pretty
"much as he pleases." After pointing
out the great advantage which would
result from the acceptance of Japan's
proposals regarding extra-territoriality
he adds that Japan's aspirations for
liberation from all oppressive treaty
restrictions, it is but simple justice to
to say "have always met with favorable
"and sympathetic consideration from
"the government and people of the
United

"United States." and is pleased also to
say "that the circumstance which
"has given to America the preponderating
"influence which she now has in Japan
"is due largely to the xxx man who
"has now for a period of unwonted
"duration represented the United States
"at the Mikado's Court."

The just remarks of "Asiaticus" con-
-cerning the fair dealing of our gov-
-ernment and people with Japan
and his complimentary words of myself
and my long service as the Representative
of the United States at this Court seem
not to have been altogether satisfactory
to the London and China Express
and were omitted therefore wholly
or in part in its republication of
that article without indicating that

the

the article of the News had not been printed entire by the Express.

Of this omission mention is made by the Japan Daily Mail of the 7th instant as will be seen by the extract of said issue of the Mail herewith.

3/

Very graphic is the picture which Asiaticus draws in this latter article of the decline of the British trade in the Far East and while suggests that the frantic efforts now being made by the few hundred British traders in Japan is, if possible, to retain their power here indefinitely by the perpetuation of the present harsh Treaty restrictions with Japan that they may continue to hold these people as mere parias in their native land, and not be themselves

reduced

reduced in the words of the writer to the unhappy condition of aliens, without occupation, condemned to the "thankless Task of everlastingly administering one another"

I have the honor to be,

Sir.

Your obedient servant.

Wm A. Bingham

Enclosure No. 1 to Mr. Bingham's No. 1843.

Extract from Japan Daily Mail. March 15th 1884.

OUR COMMERCIAL RELATIONS WITH JAPAN.

No one who has watched at all closely the course of public thought in Japan during the last ten or twelve years can have failed to notice the great and growing restlessness of the national mind on the question of making large changes in the diplomatic instruments which bind her to the Western Powers. Except perhaps the advent of the system of representation which has been promised for the year 1890, no political scheme is regarded so anxiously, not only by the Court and Cabinet, but by the native Press and all educated society. It was in 1871, when peace had been temporarily established in Japan after the restoration of the Mikado, that the impatience of which we have spoken began to take a practical shape. In that year the late Third Minister of State, Iwakura Tomomi, a noble and statesman of great energy and ability, headed an imposing Embassy to Europe and America, charged principally with the task of giving effect, if possible, to the national wish on the subject of treaty revision—which revision, according to stipulations in the treaties themselves, might be demanded about this period by either of the high contracting parties. At that time, however, Japan had yet to win her way to European sympathy and esteem. Her wish was disregarded; and the Envoy, his mission having failed in this respect, returned to his country in the following year. Grave internal troubles, which lasted until the final destruction of feudalism, in Satsuma, in 1877, then afflicted Japan, and all projects of treaty revision had perforce to be dropped for a while. But the matter only slumbered—it was never forgotten, and when quiet once more reigned it was soon forced again by public opinion to the front rank in political questions—a position it has ever since held.

That a patriotic and high-spirited people like those of Japan should feel thus strongly on the question before us cannot excite surprise when the facts are known. Japanese argue that whatever may be urged in behalf of the justice and expediency of the early treaties and Customs tariff at the time when these were made, it can hardly be pleaded that they ought to be maintained any longer in their present anomalous and inconvenient shape. Pointing, not alone to Japan's high and ancient civilization, and to the intelligence, refinement, and innate good-breeding of her people, but also, and with special pride, to 15 years' of a progress hitherto unrivalled in the world's history, they claim that she has reached a level which must be held exempt from the harsh and humiliating treaty conditions that are applicable only to inferior or ill-governed races. "We have now," say they, "been admitted into the circle of the civilized Powers, and we hold a very different place among nations from that occupied by us in the treaty and tariff-making days of Lord Elgin, Sir Harry Parkes, and the Tokugawa Shôgún." The Governments of Europe and the United States having more or less fully recognised this, and having, after long delays, yielded to Japan's continued protests against the unfitness of the existing covenants, the work of revision has been in progress for some time amongst the Powers concerned, and it now approaches completion. No apology, then, is needed for bringing the whole question to notice at the present moment. Besides comprising many points of political and public importance, it has a direct interest in respect of its tariff provisions, for a numerous body of English manufacturers and merchants, and notably for those connected with our cotton and iron trades, to which Japan is a valuable customer; while upon some of its issues depends, the immediate unlocking of one of the fairest and most productive countries on the globe to unrestricted trade, enterprise, and travel. It is time, in fact, that the veil should be lifted, and this little chapter of history put briefly before the world. If in writing it we be found to lay some stress upon Japan's view of the questions at issue it will be because circumstances have made us familiar with the hopes, arguments, and aspirations that are indulged in, apparently not without considerable reason, by her shrewd and interesting people. The Japanese, indeed, are fully alive to the great change that is coming over English public opinion respecting the treatment of alien races, and they hope much from it. They well know—for they have learned it from the late speeches of Mr. Gladstone and other leaders of thought on the questions raised by the Ilbert Bill, as well as from recent letters and essays on the same subject in newspapers and reviews, and from the public acts and opinions of such men as Lord Dufferin and "Chinese" Gordon—that the axiom that might is right has fallen far from its old place in international dealings, and that even the weakest States may nowadays look with confidence for their rightful share of the consideration and fair treatment which are at least sanctioned if not ordained by modern political maxims. How far the spirit of utterances such as those above referred to is directly applicable to Japan's present case may best be gathered by looking somewhat closely into the history and particulars of the existing treaties and tariff, and the aspect of the negotiations now in progress with Great Britain. In the course of this scrutiny we shall gain an insight into the causes which have made the whole subject one of such burning interest to the educated Japanese.

It must be owned that the circumstances under which the early treaties, our own included, were entered into are hardly such as to shut out a primâ facie suspicion of one-sidedness. For more than two hundred years Japan had maintained a rigorous seclusion from trade and intercourse with foreign nations, with the single exception of the Dutch, who had all along been permitted a footing for trade on the small island of Deshima, off Nagasaki. Unconquered and unassailed, proud of their independence and their ancient line of sovereigns, and fearing the aggressive and covetous tendencies of Western States, it was to the Japanese an article of faith to keep strangers as long as possible out of their sacred land, while the idea of being pressed into treaty making on their own soil—in Japan eyes not only an act of submission but a stain upon the national honour—was in the highest degree distasteful. At last, however, their isolation was broken through in 1854; when, frightened by the threats and war ships of Commodore Perry, the Shôgún Iyesada concluded a preliminary treaty, of moderate scope, with the United States, which was followed in the same year by a short convention entered into on England's behalf by Admiral Sir James Stirling. These acts caused the greatest surprise and consternation in the Mikado's Court, and weakened still further the already declining power of the Shôgún. Other treaties, gradually expansive in effect, with Russia, Holland, and the United States, followed in 1855-6-7. Then, in 1858, came the English negotiator, Lord Elgin, and Envoys from France, Holland, and Russia, all of them supported by naval squadrons, and bent upon concluding full and formal treaties with Japan. Besides the qualities of a highly-trained diplomatist, Lord Elgin brought with him the prestige of having recently occupied Canton and Tientsin and humbled the power of China almost at the gates of her capital; and he came to treat with a Government that was hampered and tottering, threatened by revolution, and anxiously facing those powerful internal forces which, ten years later, wrought its overthrow. On the one side was a victorious and all-powerful nation, knowing exactly what it wanted; on the other, a weak kingdom almost divided against itself, and negotiators who could not possibly know very much about the arts and principles of treaty-making, and who, besides, were wholly ignorant of foreign affairs. That in spite of such circumstances, Lord Elgin's

treaty should have been as fair and in a few respects almost generous as it certainly was, must be attributed partly to the high character of the British Ambassador, and partly without doubt to the praiseworthy example of Mr. Townsend Harris, the American Envoy—whom the Japanese implicitly trusted—whose new treaty (drafted wholly by himself, and signed just before Lord Elgin's arrival), was now very closely followed. In the Treaty of Yedo (Tokio), concluded in 1858, Lord Elgin agreed without demur to the Japanese wish that imports of opium should be prohibited; and though tonnage and transit dues was abolished, and the Customs import duties, which had been fixed in previous treaties at 35 per cent., were reduced to an advantage of about 20 per cent. *ad valorem*, while the export duties were limited to 5 per cent., yet it was and is allowed by the Japanese themselves that those changes were sufficiently reasonable. Among other concessions obtained by Great Britain were, the opening of certain treaty ports for foreign trade and residence; the right to appoint an envoy to Yedo and resident consuls to the open ports; rights of reciprocal dealings with the people: exchange of foreign coins, weight for weight, with those of Japan; and the at that time necessary evils of consular jurisdiction and extra-territorial immunities. On one point there was an important departure from the American document. Mr. Harris, while making the whole treaty revisable after fifteen years, had added at the end a condition that the tariff might be revised five years after the opening of the port of Kanagawa, if the Japanese Government should wish it. Lord Elgin, however, made this latter step optional with the British as well as the Japanese Government, thus wholly changing the character and intent of the original clause, which was clearly meant to benefit Japan alone. Whatever our Ambassador's object may have been, this alteration introduced a principle which was fully taken advantage of a few years later by England and other Powers. Lord Elgin's treaty, the tariff part of it excepted, is still in force; and under the "most-favoured nation" clauses, Japan's treaties with the other European States are identical with it. Considering the time and circumstances of its preparation, it is on the whole a fairly reasonable covenant; and though we may search it long and closely for any signs of real reciprocity, except the right ceded to Japan of sending an envoy and consuls to Great Britain, yet there is nothing in it of that "violence, fraud, and disregard of right" on England's part "the records of which," to use Lord Elgin's own words, "are strewed all over the East." It seems fair, however, to believe that a treaty so so one-sided, and made as this one was made, cannot have been meant to be perpetual, or even of long duration; and that now, after an interval of a quarter of a century, it must, in the nature of things, need some remodelling. The Japanese, indeed, contend that this necessity possesses a force and scope perhaps never yet known in a case of the kind, on account of the vast and rapid changes which have meanwhile taken place in the position and prospects, the political and financial circumstances, and in some respects even, in the national life of Japan.

The portion of the covenants now in force which, according to the views of the Japanese, calls for revision more urgently than any other is that relating to the Customs tariff. The circumstances under which the tariff, as framed by Lord Elgin, was altered in 1866 to its present shape, to suit the narrow views of a few resident foreign traders, are still remembered by them with bitterness. Weak as Japan's Government had been in 1858, they were in 1865 yet weaker—harassed by internal military and political feuds and intrigues which were daily growing worse and worse, and beset on the one hand by their own malcontents, on the other by foreign aggressions and claims. A British squadron had destroyed Kagoshima—the chief town of the most powerful of the feudal Princes—two years before; Shimonoseki had been subsequently bombarded; the whole country was ablaze with excitement against rulers who could not avenge its insults; and the treasury was impoverished hy heavy demands at home and by the enormous indemnities which had been exacted by foreign Powers. Yet it was this season of distress and difficulty that England, France, Holland, and the United States, backed by a suitable array of vessels of war, most unfortunately pitched upon for giving effect to the words that Lord Elgin had added to the last clause of the Yedo Treaty, by demanding a tariff-convention, which was carried out in the following year. Sweeping changes were wrought in the tariff under this new and extremely one-sided convention. The import duties, which Lord Elgin had fixed at about twenty per cent., were reduced to rates of which the maximum was five per cent., while the average is understood to be now little more than three per cent. No corresponding advantages were granted to the Japanese, who moreover were required, in addition to some minor concessions, to provide lighthouses, buoys, beacons, &c., for the safer navigation of the treaty harbours and approaches thereto, a condition which they have more than honestly fulfilled. It is unquestionable, and has indeed been openly admitted, that these terms were extorted from the Government by the pressure of superior force, against their will, and at a time when they were utterly helpless. It is equally certain that no proceeding in the whole history of the treaties rankles so deeply in the minds of the Japanese. If the reduction of the duties had wrought what was expected from it in the way of augmenting foreign trade with Japan that would have been a source of some satisfaction on our side. But it has not done so, and the revised tariff cannot be called a success. Trade has advanced under it but moderately, and the good it has done can hardly be made a ground for its retention. By the Japanese, on the other hand, the low scale of the present tariff, under which their whole customs dues yield them little more than 4 per cent. of the national revenue, is looked upon as a just grievance. They urge that the common national right of regulating their own duties—a right which, as they take care to point out, Great Britain cedes freely to her colonies—is at the present time of high importance to their financial polity, the freedom of which has been in this respect so long infringed. The marvellous and costly changes which Japan has undergone since the Rastoration have not been effected without sorely straining her resources and entailing on her a pretty considerable national debt, though this is almost wholly domestic, in the shape of Government paper-money and pension-bonds. The extinction of feudalism and reconstruction of the system of government alone cost the country some sixty out of the sixty-seven millions sterling to which the whole debt at present amounts. But, though Japan's finances now wear a much better aspect than they have done at any time since 1877, foreign intercourse and the promotion of Western methods of development continually swell her needs; and it is to a moderate increase of indirect taxation by means of the import tariff that she looks for funds, not only to meet necessary specie payments, but to avert the necessity of further direct imposts upon the already highly taxed agricultural lands, and other internal sources of revenue. The Japanese emphatically disavow any wish to adopt principles of protection. It is true that a few native writers of note have lately advanced some economical doctrines of this kind, which they find in force elsewhere. But their influence is small, and cannot be supposed to have any weight with the Cabinet, the moderation of whose wishes is sufficiently shown by the fact, no longer secret, that at the late Tokio Conference they indicated their willingness to be content with an average import duty of about ten per cent. This apparently disposes of recent and still current assertions that they desire to go to the length of hindering and even destroying commerce by high protective duties. So far as their own public acts and words declare, the truth seems to be that Japanese statesmen simply want a legitimate means of fostering the national well-being by a tariff which shall have a fairly substantial revenue value. As earnest and thoughtful students of political economy they must be supposed to know as well as any one the merits and wisdom of free trading in its broad sense. But they claim to know also their own fiscal needs and emergencies, and those who associate with them soon find out that, mixed with their deep dislike on this account to the yoke of the present tariff is a shrewd suspicion that it savours rather strongly of self-interest exercised to their detriment, as well as a belief that they themselves have been somewhat illiberally dealt with. The Government of Japan have long wished for specific instead of *ad valorem* duties; and when the new treaties are forthcoming it will probably be found that this principle has been in the main conceded; also that there will be an increase of the import tariff corresponding with an average duty of not less, but not much more, than ten per cent. Amongst the articles which doubtless will be most heavily taxed are wines, spirits, foreign tobaccos, and other imports of the kind now so largely used by that

increasing class of prosperous Japanese who have acquired, while abroad or from their countrymen who have travelled, tastes to which the bulk of the people are as yet strangers. Heavy wearing apparel of foreign make, or the fabrics for it, will perhaps also be charged with somewhat higher duties than the lighter textiles, the principle governing all the above imposts being the same as that which leads English financiers to tax silk, laces, and other *articles de luxe*. We believe, too, that kerosine oil will be found among the more highly taxed imports. In short, as already said, the tariff will be one for purposes of revenue only, and not for Protection, which has been distinctly repudiated by the Japanese Government. The probable influence of the new tariff on our trade with Japan is naturally a question of interest to British manufacturers and producers. If the revised duties be fixed on the scale we have indicated, it may be taken as certain that the change will, broadly speaking, have no appreciable effect on the volume of Japan's trade with this country. The Japanese cannot provide themselves with the iron manfactures which form so large and indispensable an item of their imports; and although the trade in cotton and woollen manufactured goods from Lancashire and Yorkshire has not expanded as much as was at one time anticipated, yet the trade in yarns—which is more important than any other, Japan ranking, we believe, second among England's customers under this head—has increased steadily, and would doubtless continue to do so under almost any tariff. These yarns displace no native industry or production. On the contrary, the import of this commodity helps to maintain the manufacture of fabrics suited to the tastes and pockets of the lower classes, by isolated families, during the long winter months when farm labour is almost at a standstill. English yarn, highly prized for this purpose, find their way to the remotest parts of Japan, where, mixed with inferior native filaments, they are woven into materials of the kind referred to, in the primitive looms of the rural districts, which are worked by the wives and daughters of small farmers and agricultural labourers. The above considerations seem to show that the proposed increase of the tariff presents no really objectionable features. It is likely that an important feature in the instrument embodying the new arrangements will be stipulations—on which the European Powers are at present disposed to insist—that if at the end of a term of eight years Japan shall have been thrown open to foreigners, her Government shall thenceforward be left free to regulate their own Customs duties; but that, if Japan be not so thrown open, the revised tariff shall undergo no further change except by mutual consent. It is not possible at this moment to say for certain whether these conditions will be embodied in the new convenants, the ultimate decision depending, we have reason to believe, upon the issue of the further negotiations which will be carried on in the Japanese capital after the arrival of our new Minister, who is now on his way thither. Should they be adopted there will be room for some interesting speculation as to whether the Japanese will open up their country at the time and on the terms above named; our own opinion, however, being that their course in this respect will be found to depend upon another consideration, which we now proceed to notice.—*Daily News.*

We may observe here, though indeed the statement seems superfluous, that the reprints of "Asiaticus'" articles published in the *Japan Mail*, were taken directly from the columns of the *Daily News*. The *London and China Express*, in reproducing the latter of the two articles, appears to have unaccountably mutilated it, by omitting certain portions and neglecting to indicate the omission in the usual way. It does not concern us to discuss the motive of such a strange and unprecedented proceeding. Plainly, if there rests with a republishing journal discretion to cut out as much as it pleases of the article it professes to reproduce *in extenso*, not only the sequence of the writer's arguments, but even the very spirit in which he writes, may be confused and misrepresented. What seems most probable is that the compositors of the *London and China Express* failed, through some momentary carelessness, to insert asterisks in the place of the sentences omitted. We cannot for a moment suppose that any intention to mislead existed.

Enclosure. no. 2, to Mr. B. No

JAPAN AND THE WESTERN POWERS.

In a former article we showed the manner in which it is proposed to deal with the tariff question in the negotiations for treaty revision that are now in progress between Japan and the Western Powers. It remains to consider another important proposal which has been put forward by the Japanese Government, namely, a plan for cutailing the system of Consular jurisdiction and "extra-territoriality" which is now in force in Japan. The grave inconveniences of this system are well known throughout the Far East, and to all who have had practical experience of its operation—as, for example, to the French in Algiers and Tunis, where they found it necessary to get the other Powers to agree to its abolition before they could reform the administration, and to ourselves at the present moment in Egypt. In Japan, these inconveniences have now reached a pitch that calls loudly for some redress. So strongly do the Japanese feel upon the question that they are not at all likely to throw open their country to foreigners until some concession has been granted to them in respect of it. The subject is much too large and difficult to be fully discussed here. But, to put it briefly, extraterritoriality and Consular jurisdiction, as generally interpreted and carried out in Japan, mean, not only that—except in civil cases where the defendant is a native—foreigners are exempt from Japanese jurisdiction of every kind, but that, while purely civil and purely criminal cases are tried by the Consular authorities of the nations to which the persons concerned belong, Japan's own laws and regulations, whether administrative or municipal, or directed to the safety of the State, are, as a rule, ignored all but one or two of the foreign representatives. Consular jurisdiction, in fact, is made to imply Consular legislation as well. Any ruffian, not a Japanese, may defy the above laws with impunity, in any part of the country, because, as has been explained in the ably edited *Japan Weekly Mail*, the Japanese cannot infringe his sacred rights, and because no Consular Court has the strict legal power or obligation to recognise Japan's laws until after the performance of the almost impossible feat of unanimous legislation to that end on the part of all the Treaty Powers. If, on the other hand, he commit a civil or criminal offence of a kind recognised by the treaties, he and the prosecutors and witnesses and everybody concerned must be taken before one of his own Consuls, even though this involve a journey of hundreds of miles over mountain, forest, and snow, rather than trust his precious liberties to the dealings of a native judge whose skin is a little less white than his own. In a word, this foreign individual enjoys "extra-territorial immunities." He laughs at native laws, he pays no taxes, and he is at liberty to work his sweet will pretty much as he pleases. Japan, indeed, provides him with police protection and other advantages proper to municipal government, for which he pays not a farthing. Thus also it happens that a large section of the foreign Press at the Treaty Ports, which is mostly English, can and does fearlessly preach treason and sedition in the land which harbours it, and habitually disgraces journalism by heaping indiscriminate and false slander and abuse upon all ranks of the Government and native society, from the Mikado downwards. And, after all, it may be asked, why does the British taxpayer go to the great expense of maintaining these costly establishments of judges, consul, trained and highly-paid interpreters, and others; why, in fact, is there a large organized judicial system in a country where all the English people put together—women, children, and aliens under British protection included—amount only to some 800 souls? Practically, the only people supposed to benefit by it are the evil-doers; and the chief reason of its existence would seem to be that the lowest class of the foreign population, the criminal and "rowdy" portion, may be punished by their own countrymen instead of by a native. Again, the present almost intolerable deadlock in the municipal affairs of Yokohama—the chief of the Treaty Ports—which is being exclaimed against as loudly by foreigners as by Japanese, affords a striking example of the confusion and misery that are bound to arise from extra-territoriality, but which some writers still persist in calling "sentimental grievances" on the part of the Japanese. Any one with a taste for these matters may easily think out for himself the countless complications and failures

that must infallibly accompany such a system, from the diversity of the laws and the inequality of punishments in a host of Consular courts, disputes as to the nationality of accused persons, judicial incompetency, conflict of authority, ministerial interference, and so on; and he will soon come to see how little real justice there can now be in the Treaty Ports of Japan. Though the British and one or two other Consular Courts are conducted well enough, some of those tribunals would seem to have been expressly designed for promoting mockery of justice and even encouragement of iniquity. It must be admitted that extra-territoriality, in spite of its drawbacks, cannot be dispensed with where Westerns reside on the soil of barbarous or semi-barbarous races, especially where judicial torture exists, or where the evidence of Christians is not regarded as of equal value with that of natives. But the Japanese contend that, whatever may have been necessary or expedient in their case a quarter of a century ago, they can now claim at least a partial release from its indignities and trammels, on every ground of justice and international right. They point to their earnest and solid progress and achievements during that period—to the spread of education and juridical knowledge, the thorough reform of their criminal procedure and prison system, the recognised ability and learning of the native judges, and improvement in the administration of justice on European principles; and, lastly, to the singularly excellent Codes now in operation in their courts of law, which have been awarded unreserved praise by the most distinguished foreign jurists. They urge that in the face of these facts the maintenance of the present galling inequalities would be nothing less than a national slur and humiliation; and they press for some such change as shall give them at least partial judicial rights over foreigners, and ensure respect and observance of their regulations and laws. Quoting the examples of Greece, the Sandwich Islands, the Republics of Central and South America, and other States, they ask for equal fair play and recognition. With all their light-heartedness, the Japanese are an acute, watchful, and patient people, and know perfectly well what are their rights. It can hardly be supposed that they will be found to have asked for them in vain.

The Japanese Government have proposed the expedient of mixed tribunals, or courts presided over by a combination of native and foreign judges, with one or more courts of appeal in which the latter would be in a majority. In these tribunals the laws of Japan would be administered, and they would deal with every description of case in which foreigners might be concerned, excepting only cases between foreigners themselves, which would be left as now to the jurisdiction of the consuls. The foreign judges would be highly paid lawyers from England, America, and other countries, chosen for their integrity, learning, and experience. Mixed tribunals, as is well known, are rather cumbrous and costly. But there is an urgent necessity for some means of escape from the wretched system we have already briefly described, with its sixteen consular courts, its inconveniences, scandals, and frequent travesty of justice. The very strong feelings of the Japanese on this subject also call for considerate recognition. A change of some kind must be made before very long if we would follow a wise and generous policy; and there is reason to believe that no time will be lost in deliberating upon this question as soon as an agreement has been come to about the tariff. It is not unlikely that the first working of the scheme now proposed would be attended with some difficulties. But these could hardly be of long duration. And it seems fair to anticipate that, as a middle course, and as a stepping-stone towards the greater change which will doubtless come in time, the mixed tribunals would be found to answer well, to establish a high standard of justice, and to inspire general confidence. That the adoption of this proposal would also satisfy the natural and legitimate aspirations of the Japanese is shown by the importance of that which they are understood to have offered in exchange for it—namely, the free opening of the country. Nothing could be more significant than this of the genuineness of their dislike of the existing race inequalities. To get these abolished they offer the greatest concession it is in their power to make. The fact that such an opening-up would be pretty certain to benefit Japan more than any other country is no answer to this. For it is her last "trump-card," as Sir E. Reed has called it, long and prudently withheld, to be played in exchange for that equal recognition on which she has set her heart. Nor is it without considerable value to the other players in the game. There is in Japan—the New Zealand of the northern hemisphere—a wide field for the spread of enterprise and the profitable employment of capital. Her ample and far from wholly developed agricultural resources, her not inconsiderable mineral wealth, in the shape of gold, silver, copper, iron, coal, antimony, sulphur, and other deposits, and her vast forests and extensive and valuable fisheries and seaweed grounds, may be said to languish, for want of capital, with its power to stimulate, multiply, and enrich, and of that skilled and resolute energy which Western partnership, superadded to the naturally strong commercial instincts of the Japanese—but impossible so long as extra-territoriality lasts—would bring to the extension of her internal commerce, and the much-needed improvements of her means of communication. To these attractions Japan adds those of an enjoyable and salubrious climate, a fertile soil, and a belt of latitude highly favourable to the growth of a very wide range of products. Hence, while it is certain that Japan would gain advantages that can hardly be overstated from the acceptance of her proposals regarding extra-territoriality, the Treaty Powers also would in a greater or less degree share in her increase of prosperity. In connection with Japan's aspirations, it is simple justice to add that for ten years past her efforts to recover ground lost in times of stress and ignorance have always met with favourable and sympathetic consideration from the Government and people of the United States. The circumstance, which has given to America the preponderating influence she now has in Japan, is due largely to the high character and long experience of public life of the eminent man who has now for a period of unwonted duration represented the United States at the Mikado's Court.

We cannot leave our subject without referring to the important change which is coming over British trade in the Far East, and with which our manufacturers would do well to reckon. Every year this trade tends more and more to pass into the hands of natives on the spot. While they can conduct it more cheaply than any one else, they also know better the real wants of their countrymen, and therefore are less liable to make mistakes. No one can have lived long with open eyes in the East without seeing that the days of the European commission merchant in that region are numbered. The powerful foreign "hongs," with their princely fortunes, have either disappeared or have passed from the grade of bonâ fide merchants into that of general agents and promoters. Their humbler successors are going too; and a better, because mere natural and economical, system is fast coming into operation. Indeed, at the present time, the position of the swarms of European commission merchants in some of the smaller treaty ports of China and Japan might be not inaptly likened to that of the 1662 functionaries in French Cochin China—a colony of twenty years' standing—who, as a Deputy lately pointed out in the Paris Chamber, since there are "neither agriculturists, nor merchants, nor manufacturers, nor colonists of any kind," are condemned to the monotonous and thankless task of everlastingly administering one another. The coast and riverine trade of China and Japan is already to a great extent in the hands of native companies. Chinese merchants, like the well-known Tong King Sing have learned the English tongue and business ways in the schools and offices of Hongkong. Japanese learn them abroad. These are the Eastern merchants of the near future. Their advent can only be regarded with satisfaction. The more closely events connect British producers and Oriental consumers—and *vice versâ*—and the fewer and less costly the intervening conduits can be made, the better will it be for both. The tendency and ultimate results of this great and inevitable movement in Eastern trade may well be commended to the careful consideration of chambers of commerce and other representative commercial bodies in the United Kingdom.—ASIATICUS in the *Daily News*.

DEPARTMENT OF STATE
MAY 5 1884
RECEIVED.

Ack by ret of file

Wm Edwards

No. 1844. United States Legation

Tokei, Japan 8th April 1884.

Mr. Bingham

To the Secretary of State

Subject.

Summary of Treaty Negociations in Japan - Japan Weekly Mail March 15th 1884.

No. 1844. United States Legation

Tokei, Japan, 8th April 1884.

Hon. Fred'k T. Frelinghuysen,

Secretary of State,

Washington, D.C.

Sir:

I beg leave to place on record for your information a valuable, and I believe authentic, summary of Treaty negociations in Japan at the several periods of which it treats. This summary is entitled "The old methods", and appeared in the Japan Weekly Mail of the 15th ultimo a copy of which I have the honor to enclose herewith.

It was prepared and published, you will please observe, in reply to a somewhat intemperate article which

D.

which had appeared in a Recent-
number of the London and China
Express, with an extract from which
the Summary opens. It first quotes
the official note of Colonel Neale,
the British Chargé in Japan, to
Earl Russel, of date Feby 10th 1863,
in which Col. Neale says; the
"Tycoon and his Government have
"fallen into National discredit
"by assenting to the renewal of
"intercourse with Western people
"though indeed the assent was
"obtained under irresistible pressure.
Sir R. Alcock, British Minister
in Japan in a dispatch to Earl
Russel, of date Nov. 19th 1864, says;
"All treaties made with Japan
"have been forced upon it x x x x x

"It-

"It is in vain to expect that Treaties
"so entered into can be maintained
"by a religious abstinance from the
"use of force". It is noted that the Trade
Regulations with Japan of 1858 pro-
vided that "five years after the opening
"of Kanagawa, the import and export
"duties should be subject to revision,
It is stated that Kanagawa was
opened July 1st 1859 and that the
Tariff of 1858 was on a basis of
20 per cent, that, on the 5th or 6th of
September 1864 the allied fleets of
the Treaty Powers destroyed the
fortifications of Shimonoseki and as
a result the Shimonoseki Convention
of October 22, 1864, was concluded
which provided for the payment by
the Tai Kun's Government of $3,000,000 in

to

to the Treaty Powers, for the hostile act of the Prince of Nagato; that eight months after Earl Russell wrote that the general interest of trade and foreign relations in Japan, would be best consulted by absolving the Tai Kuns Government from two thirds of the $3,000,000 indemnity provided 1st That Hiogo and Osaka be opened to foreigners on June 1st 1866, 2nd That the Mikado give formal sanction to the Treaties concluded with the Taikun. 3rd That the duties on imports into Japan be generally reduced to 5 % and shall in no case exceed 10 per cent, the Earl further said; a great social revolution is taking place in Japan, that Civil war may result

result, and it seems that these Commotions arise almost exclusively from the relations of late years established between Japan and Foreign nations. The record further shews as published in the in the Summary, that the proposals of Earl Russell as alone were enforced by the Flag Ship of the English Admiral and Eight War vessels all present at Osaka under the guns of which the Western Powers as Sir Harry Parkes expressed it, gave "proof of the determination "of the Western Powers" to insist upon "the performance of the Treaties" including of course the $3,000,000. indemnity, and the British Minister added that "we are indebted for the success

of

of our efforts to the efficient aid of
"our Naval Commanders", I conclude
My special reference to the Summary
by inviting your attention, to the further
letter of Sir Harry Parkes to Earl
Russell, which states" we have —
"relinquished no portion of the indemnity
"although two of the three conditions
"we were willing to receive viz
"exchange have been secured,"
that is, the opening of the two
ports, and the sanction of the Treaties
by the Mikado, and I add on my
own account, the agreement of this
Government to reduce the Tariff to
5 per cent ad valorem within twelve
months, which agreement was made
on the 24th November 1865, and
finally "concluded" 25th June 1866.

(See

(See Vol of Treaties and Conventions
with Japan p.p 249-57-) which Contains
in its introduction or preamble the
following words," And the Japanese
" Government having given the said
"Representatives (of Great Britain, the
"United States of America, France and
"Holland) during their visit to Osaka
"in November 1865 - a written agree-
"ment to proceed immediately to
"the Revision of the Tariff in question
"(1858) on the general basis of a
"duty of five (5) per centum on the value
"of all articles imported or exported."
A mere inspection of the Schedule
annexed to this Convention and of
the monthly reports of this Government
of Exports and imports from 1866 to this
day will shew that under the
Convention

Conventions of 1866 - Japan has in the aggregate realized a duty on all foreign imports not Exceeding 4½ per centum ad valorem, And this Convention remains still in full force which it is but the truth of History to say was wrung from this Government under the guns of eight (8) men of war representing the Western Treaty Powers, and has so remained notwithstanding the provision (Art. II) that it should "be subject to revision July 1st 1872" During these nine years from July 1st 1872 now nearly closed Japan has appealed to the several Treaty Powers for the revision of said Convention and a release from its unjust provisions to which appeal

appeal thus far no one of the Western Powers has unfavorably responded, save the Government of our own Country by the Treaty of 1878 and the just and considerate expression of the disposition of our Government to concede Japan's requests as given to me in your Instructions and as given to the World at large by the President in his annual Message of December last.

I have the honor to be,

Sir,

Your obedient servant

Wm A. Bingham

Enclosure - Extract from the Japan Weekly Mail March 15th 1884.

Enclosure No. 1. with Mr. Bingham's No 1844.

THE JAPAN WEEKLY MAIL.

March 15, 1884.]

THE OLD METHODS.

In a recent number of the *London and China Express* we find the following:—"Japan has for years past been crying out in all tones against the unfairness of the treaty stipulations binding her to Western Powers; every argument that could be drawn from morality, justice, self-interest, and all the other modes of appealing to a nation's feelings and interests have been employed to discredit the present treaties and tariff between Japan and the West. England, France, America, and the others are represented as highwaymen and bullies who broke into the calm and blissful seclusion of the land of the Rising Sun, and rudely demanded 'your trade on our own conditions or your life,' and who secured what they wanted as a burglar armed with a couple of revolvers might get what he wanted from an unarmed householder. We have heard much of this declamation for ten years past. The truth, however, is that the treaties almost as they exist now—the tariff was of course subsequently altered under a provision of the treaties themselves—were made by Mr. HARRIS, the American negotiator, during a residence at Shimoda, where he had neither force, nor show of force. With none but his interpreter, from his solitary post in the peninsula of Idzu, he obtained from the Japanese the treaties which are now represented as being extorted from an innocent, a terrified, an unwilling people at the mouth of the cannon by acute and unscrupulous envoys."

The methods employed in opening relations with Japan thirty years ago, and in extending those relations subsequently, have been discussed over and over again. Yet, since the Treaties are so much before the public just at present, and since a contemporaneous writer has shown himself so remarkably misinformed, it may be worth while to devote a few moments to a recapitulation of facts.

There is one very simple and decisive mode of approaching the question dealt with in the above quotation. Was Japan willing to make the Treaties, or was she not? If the former, then indeed neither force nor menace was required. If the latter, by what means was her reluctance overcome? In answering these questions it is unnecessary to draw any deductions of our own from past events. The despatches of Her MAJESTY'S Representatives in Japan furnish all the information that is required. Lieutenant-Colonel NEALE, writing to Earl RUSSELL, Feb. 10th, 1863, said:—"The TAIKUN and his Government, as an undeniable fact, have fallen into national discredit by assenting to the much dreaded renewal of intercourse with Western people, *though indeed the assent was obtained under irresistible pressure.*" And again Sir R. ALCOCK, in a despatch to Earl RUSSELL, dated November 19th, 1864, wrote:—"*All Treaties made with Japan have been forced upon it; and until great changes have taken place in the character, institutions, and government of the people, it is in vain to expect that Treaties so entered into can be maintained by a religious abstinence from the use of force as a means.*" We are not obliged, therefore, to concern ourselves about what Japanese writers or Japanese advocates have asserted. We have the unequivocal statements of HER MAJESTY'S Representatives at the Japanese Court, that this country's assent to the Treaties was obtained, in every case, by "force" and "irresistible pressure."

So much for the methods employed to secure the conclusion of the Treaties, in the first place. Let us now consider briefly how their ratification was brought about. Incidental to this part of our subject, and, indeed, inseparable from it, is the question of tariff revision. It will, therefore, be convenient to consider the two together, and to note, as preliminary to a proper understanding of the matter, that the Trade Regulations of 1858 contained the following provision:—"Five years after the opening of Kanagawa, the import and export duties shall be subject to revision, if either the British or Japanese Government desire it." The port of Kanagawa was opened on July the 1st, 1859, so that the tariff became subject to revision on July the 1st, 1864. It was a tariff fixed on a twenty per cent. basis.

On the 5th and 6th of September, 1864, the allied fleets of the Treaty Powers bombarded and destroyed the fortifications in the Strait of Shimonoseki, and in the sequel of these operations a Convention was signed, on October the 22nd, 1864, between the TAIKUN'S Government and the Foreign Representatives, by which the former undertook to pay "a gross sum of three million dollars for indemnities and expenses occasioned by the hostile acts of the Prince of NAGATO."

Eight months later, a portion of this money having been paid, Earl RUSSELL wrote as follows:—HER MAJESTY'S Government are inclined to consider that the general interests of trade and of foreign relations with Japan would be best con-

sulted by an arrangement which should absolve the Government of the TAIKUN from two-thirds of the whole sum of three million dollars payable under the agreement of 1864; provided, first, that the port of Hiyogo and the City of Osaka are opened for the trade and residence of the subjects of the Treaty Powers on the 1st of June 1866; secondly, that the sanction of the MIKADO is formally given to the treaties already concluded by the TAIKUN with the Treaty Powers; and thirdly, that the duties on imports into Japan are generally reduced to 5 per cent., and shall in no case exceed 10 per cent."

In forwarding these instructions to Sir HARRY PARKES, Earl RUSSELL said:—"The reports recently received by HER MAJESTY'S Government from Japan, lead to the conclusion that a great social revolution is taking place in that country, and that a civil war may be the consequence. It would seem that these internal commotions arise almost exclusively from the relations that have of late years been established between Japan and foreign nations."

The position, then, was simply this. On the one side were the Foreign Representatives, entitled to ask for a revision of the tariff at any time after July 1st, 1864, as well as to compel payment by Japan of a large sum of money by way of indemnity for war expenses; but willing to remit two-thirds of that payment in exchange for three concessions, of which the MIKADO'S ratification of the Treaties, and a reduction of the tariff from twenty, to five, per cent. were two. On the other side was the TAIKUN'S Government, known to be threatened with a civil war as the result, almost exclusively, of its assent to the Treaties whose ratification was now sought.

Sir HARRY PARKES, thus instructed, and himself acknowledging that "the option of accepting the new proposals or continuing to pay the indemnity would, of course, be still reserved by the TAIKUN," resolved nevertheless, to formulate those proposals from the flag-ship of the English Admiral and to emphasize them by the presence of eight other vessels of war, the combined fleets of three Western Powers. We need not point to the inference this policy suggests: we need not point to Sir HARRY PARKES' own explanation that "the appearance at this moment, in Osaka Bay, of the Foreign Representatives, attended by a considerable naval force, is a proof of the determination of the foreign Governments to insist upon the performance of the Treaties": we need not point to the fact that in opening negotiations with the TAIKUN'S Ministers, he concluded his despatch by saying, "the Undersigned also takes this opportunity of informing their Excellencies that he is accompanied by Admiral KING, C.B., Commander-in-Chief of all the naval forces of HER BRITANNIC MAJESTY in China and Japan, and that this letter is dated from his E[illegible]

hands of that armed and dangerous class who might be prompted to commit aggressions, either by their own fanatical feelings, or at the instigation of that faction who were opposed to the TAIKUN," and that, although "it would severely tax their resources, they preferred paying the indemnity to the responsibility of the protection of a foreign community in the vicinity of Kiyoto." The first proposal they acceded to with great difficulty, and the third appears to have obtained their assent at once. They agreed, in short, without comment or objection to a request that the tariff should be changed from a twenty per cent., to a five per cent., basis. There is not in the history of the world another instance of such sweeping complaisance. The reason of it is not far to seek. In the eyes of the TAIKUN'S Ministers, tariff questions sunk into utter insignificance by the side of the incomparably greater issues that were at stake. "We can perceive," Sir HARRY PARKES wrote, on his arrival at Osaka, "that the internal affairs of the country are seriously disturbed, and that we have arrived at a critical period in the history of the TAIKUN'S administration. He is about to enter on a struggle with a powerful Daimio, CHOSHIU, on the successful issue of which the maintenance of his supremacy may depend, and while embarrassed with these hostilities he has to contend, at the same time, with a strong opposition to his policy at the MIKADO'S Court, which may at any time take an active form and add materially to his difficulties." It was not likely that at such a moment as this, and with only ten days to answer proposals formulated by Foreign Representatives having a powerful fleet at command, the TAIKUN'S Ministers would pause to chaffer about rates of import duty. They sanctioned the five per cent. proposal with almost contemptuous indifference, and Sir HARRY PARKES was able to tell his Government, "we have relinquished no portion of the indemnity, although two of the three conditions we were willing to receive in exchange have been secured." On the 1st of July, 1864, the original tariff became subject to revision at the request of either of the high contracting parties. On the 24th of November, 1865, the Treaty Powers obtained its revision on their own terms, which they dictated from behind the guns of a powerful fleet at a time when the Government of the country was within appreciable distance of civil war. On the 1st of July, 1872, the revised tariff again became subject to revision at the demand of either of the high contracting parties. We are now in 1884, and Japan has not yet succeeded in obtaining any modification of the terms obtained from her under such exceptional circumstances. These comparisons speak for themselves. It is impossible to misinterpret their language.

DEPARTMENT OF STATE
MAY 5 1884
RECEIVED.

Mr Edwards
&
Mr Bradshaw for

No. 7. United States Legation
Tokei, April 8th 1884.

M. N. Whitney, Interpreter
To the Secretary of State.

Subject.
Salary account for first quarter
1884.

No. 7. United States Legation
Tokei, Japan, Apl. 8th 1884.

Hon. Fredk T. Frelinghuysen,
Secretary of State,
Washington, D.C.

Sir:

1 I beg leave to enclose the statement of my account as Interpreter to this Legation for the first quarter of the current year. On the 31st ultimo I drew on Messrs Morton Rose & Co., London, my bill calling for the sum of £ 126.. 8.. 7. Sterling, and sold the same to the Hongkong and Shanghai Banking Corporation, Yokohama, for which I received, at the current rate of Exchange,

2 as shewn by certificate herewith, the

the Equivalent of $625^{00}/_{100}$ U.S.
Gold and no more.

I have the Honor to be,
Sir,
Your Obedient Servant
Willis Norton Whitney

Enclosure. (1) Statement of account
(2) Voucher for sale of
draft.

DEPARTMENT OF STATE
MAY 5 1884
RECEIVED.

Ans by no 1
File

Mr Edwards

No. 1845. United States Legation,

Tokei, Japan, 9th Apl. 1884.

Mr. Bingham

To the Secretary of State

Subject

Foreign Population of different nationalities in Yokohama, and the interest of the same in Treaty revision.

No. 1845. United States Legation

Tokei, Japan, 9th April 1884.

Hon. Fredk T. Frelinghuysen

Secretary of State

Washington, D.C.

Sir:

In yesterdays Japan Gazette I find a statement of the foreign population in Yokohama, in publishing which the Editor naively remarks that "the question of the large number of naturalities to "be considered in connection with "treaty revision xxx may be looked at" He also thinks it important to note that when the Chinese residents in Japan are excluded (as they are excluded in the matter of treaty revision) numbering 2,505, there remains

only

only a foreign ~~[illegible]~~ population in Yokohama (which is nearly the entire foreign population in Japan) of the small number of 1392, all told, to dictate to all the Foreign States and to the people of this Empire what revision shall be made, if any, of the existing Treaties with Japan. Of this small number I venture to say not exceeding 300 have signified any desire to dictate what Changes shall be made, indeed I believe that all other foreigners in Japan desire that speedy and full justice be accorded to this people. Audacity is the word with the three hundred.

I have the honor to be, Sir,

Your obedient servant

Mr. A. Bingham

Enclosure.

Extract from Japan Gazette
April 8th 1884.

The Japan Gazette.

YOKOHAMA, APRIL 8TH, 1884.

THE *Hoshi Shinbun* states that a census of foreign residents of Yokohama was taken last month, with the result following. How this census was taken is not stated. No application appears to have been made to individuals, and consequently its authenticity is doubtful.

American	230	Italian	18
Austrian	51	Portuguese	45
Chinese	2,505	Russian	42
Danish	12	Spanish	30
English	573	Swedes	14
French	102	Swiss	32
German	200		
Hawaian	6	Total:	3,880

These figures seem familiar, and on looking back we find they are simply taken from H. B. M. consular report of June 20th 1881, and garbled in the stealing. Under the head of *Austrian* are erroneously included Dutch 51, Belgian 11 and Austrian 6.

The question of the large number of nationalities to be considered in connection with treaty revision is so frequently raised that the relative numerical strength of each may be looked at. There are 16 nationalities, mustering in all 3,897, and the per centage is as follows:—

Of this number.

Chinese represent	64.27 per cent
All other foreigners represent	35.73 „

The latter, 1392 in number, may be divided in the following order.

English	14.70	Dutch	1.31
American	6.42		
German	5.17		30.22
French	2.62	All others	5.51

This means that, when the Chinese are excluded, any motion supported by the five nationalities named above, has the support of 85 of each 100 foreign residents.

Request to Confer
May 8. 1884
entd.

Asstd. May 9 per
Cutler

DEPARTMENT OF STATE
MAY 5 1884
RECEIVED.

Mr Edwards

No 1546.

United States Legation Japan.

Yokei. April 9th 1884

Hon. Bingham.

To the Secretary of State.

Subject.

List of Stationery wanted for this
Legation.

No. 1846. U. S. Legation, Japan.

Tokei, April 9th 1884.

Hon. Frederick T. Frelinghuysen,

Secretary of State,

Washington, D.C.

Sir:

Herewith I have the honor to enclose a list (in duplicate) of Stationery wanted for this Legation which I respectfully request may be forwarded by the Department.

I also send in the pouch which will convey this note one (1) mail pouch, which I return to the Department.

I have the honor to be,

Sir.

Your obedient servant,

Mc A Bingham

Enclosure.

List in duplicate.

List of Stationery wanted for the
U. S. Legation, Tokei, Japan.
Full supply as follows-
Department Cap paper ruled and hand finished
" " " unruled " " "
Thin envelopes to match, narrow size.
Linen lined " " " narrow size (Dept of State)
White note paper thick and thin unruled.
Envelopes to match " " "
Paper binders assorted. 2 boxes.
Rubber elastics assorted 1 box
Blotting paper.
Green tape.
Red and blue cord.
Pencils.
2 sets assorted black lines.
Analine inks for stamp.

DEPARTMENT OF STATE
MAY 5 1884
RECEIVED.

Rec'd with thanks May 10. 84 Crosby

W. H. Edwards

No. 1847.

One set to Library May 10. 84 Crosby

United States Legation

Tokei, Japan 9th April 1884.

Mr. Brigham

To the Secretary of State

Subject.

Japanese Penal Codes, and Codes of Criminal Procedure etc. Comments on the same by Dr. S. Mayer and others.

No. 1847. United States Legation

Tokei, Japan 9th Apl. 1884.

Hon. Fredk T. Frelinghuysen,

Secretary of State

Washington D.C.

Sir:

I have the honor to enclose herewith for your consideration five general Pamphlets in duplicate, on the Penal Code and Code of Criminal Procedure recently prepared for and adopted by this Government. These general Pamphlets are the productions respectively of Dr. S. Mayer of Vienna, Prof. Desjardins of Paris Prof. Van Hamel of the University of Amsterdam, Prof. Lahlié of Paris. and Prof. Esmein of Paris.

It seems to me safe to say that these learned gentlemen have given full

full assurance that this Government is capable of administering justice in accordance with the general principles of the enlightened and most advanced jurisprudence of the Western nations.

I have the honor to be,

Sir,

Your obedient servant

Wm. A. Kinghum

Enclosure - Five pamphlets in duplicate on Criminal Code etc of Japan.

1883.

ACCOUNT OF (OR NOTES ON) THE PROJECTED CRIMINAL CODES

FOR THE

EMPIRE OF JAPAN,

BY

MR. A. ESMEIN,

Professor à la Faculté de droit, Paris.

Extract from the *Nouvelle Revue Historique*, published under the direction of Mr. Ed. Laboulaye, Fourth year, 1880.

(Translated from the Original French; and reprinted from the "Japan Weekly Mail" of the 16th of June, 1883.)

ACCOUNT OF (OR NOTES ON) THE PROJECTED CRIMINAL CODES FOR THE EMPIRE OF JAPAN.[1]

DRAFT OF A PENAL CODE for the Empire of Japan, presented to the Senate by the Minister of Justice in the eighth month of the tenth year of Meiji (August, 1877): Tokio (August, 1879).

Draft of a Code of Criminal Procedure, for the Empire of Japan, presented to the Senate by the Minister of Justice in the ninth month of the twelfth year of Meiji (September, 1879): Tokio, September, 1879.

Long closed to Western influence, Japan invites it to-day with as much passion as she formerly used in repelling it. She wishes to appropriate at a moment's notice that powerful civilization to which a long evolution has brought the nations of the West. She has come to seek among us not only our mechanical inventions, but also the moral and political principles upon which our modern world exists and which constitute its true force: she wishes to transform her laws, and, let me add, it is above all from France that she asks for inspiration and initiators. Our readers are personally aware that for more than six years one of the directors of this Review, M. Boissonade, fulfils in Japan a mission that promises to be fruitful.

We have to-day before our eyes the French translation of two intended Codes: a Penal Code and a Code of Criminal Procedure. It cannot be said that these plans are definitive; but such as they present themselves to us, they are none the less interesting to study.

A dominant feature at once strikes the reader: they are French institutions and principles which the drafts introduce into Japan. The Penal Code contains our rules as to the nature, fixity, measure, and execution of penalties: our theory of penal imputability: our classifications of infractions. In the Criminal Procedure we find our theory of public action and of civil action; our Judiciary Courts, *(jurisdiction de jugement):* police, correctional, assize, with its double element, jury and magistrates; preparatory instruction, secret and written, conducted by the Judge of Instruction at the instigation of the Public prosecutor; above the judge of instruction, the Chamber of Council and the Court of Appeal;—oral and public procedure before the judiciary courts;—a Court of Cassation with its well-known attributes. All this comes from France; hardly if now and again occurs some detail concerning measures or currency, some special incrimination, some moral trait, to remind us that we are in Japan.[2]

"Criminal Laws," said Mr. Réal, "being made to curb the passions of men, always carry, by that very fact, the imprint of the places and epochs which have witnessed their birth; they are of those plants which, producing excellent fruit upon their native soil, cannot be transplanted, or acclimatized, or produce fruit upon a foreign soil."[3]

At first sight this opinion appears wise and founded upon the laws of history. On further reflection, however, we are brought to ask whether logic and experience do not prove the contrary. Have not our rules upon the nature of penalties—rules which exclude from the penal system whatever is cruel and arbitrary—human reason in its simplest and most general principle for their origin? Do not our philosophers and publicists of the eighteenth century, when they produce these maxims, draw them from good common sense, which, if it sometimes closely approaches genius, is none the less the common patrimony of all men?

(1) By Mr. A. Esmein, Professor à la Faculté de droit (Extract from the *Nouvelle Revue Historique* published under the direction of Mr. Ed. Laboulaye, fourth year, 1880.) Tokio. Reprinted at the Imperial Printing Office, 1883.

(2) See, for example, *Projet de Code Pénal*, p. 55 *et seq.* On the sale of free men: Art. 268-274. On the commerce in and use of opium. *Projet de Code de Procédure Criminelle*, Art. 195,483. the apposition, by a witness of his seal or signet to his written deposition, by a juror upon the form of oath.

(3) Exposition of the motives of Title VI., Book II., of the Code of Criminal Instruction. Locré, Vol. XXVIII., pp. 46-47.

Let us observe that France, when she adopted these principles into her laws, had lived, for many centuries under the empire of opposite ideas. In our own days, when penitentiary science proclaims that imprisonment and work, the hope of freedom conquered and deserved, are the most powerful agents of moralization, it invokes interests and sentiments which have power over man throughout the world and under every clime. As regards ourselves, we have given the example of an application of our penal code to foreign races. Its provisions are those which we apply to the Arabs in Algeria; and a recent decree has just rendered the same applicable, with slight modifications, to crimes and delicts committed in Cochin-China by natives or Asiatics.[4]

That which is true for the penal law is also recognized without difficulty in certain rules of criminal procedure. The untrammelled defence of the accused, the publicity of the pleadings, are points which depend on good sense and universal justice. The abolition of torture, like the abolition of slavery, can only moralise a people, be they who they may. Oral procedure before the judiciary courts, the theory of moral proofs, the institution of a public prosecution, may be adapted to all civilizations. When we have to do with the organization of jurisdictions, the question becomes more delicate: here it is prudent to make perfect what already exists rather than to create a *tabula rasa* in order to make experiment of an absolutely new system.

The adoption of Jury Procedure[5] may appear somewhat rash. However, we must not forget that, if the criminal jury has developed spontaneously in different times and in different places, it is by radiating from one single centre that it has spread over Europe and America. If the germs of procedure by jury are found in our old feudal law, introduced by the Normans into Great Britain, when France borrowed it bodily from England, substituting it for the criminal procedures of the ancient monarchy, it was really an English institution that the legislators of the *Constituante* acclimatized among us. From our laws it has successively passed into the divers codes of European nations; and it has become one of those institutions which, like the representative system, characterises rather a certain degree of civilization than a race or country. We should not forget, on the other hand, what difficulties its acclimatization has undergone among ourselves. For a first trial the question of the choice of jurors is of capital importance. According to the scheme of Japanese Criminal Procedure, this point will be regulated by a special law which we have not before us.

(4) Décret of 16 March, 1880 (Journal Officiel du 18 Mars, pp. 3153-3155). According to Article 4 it is true that "for all Crimes, Delicts, and Contraventions of Natives or Asiatics, not provided for by the present Codes, the Tribunals will continue to apply the Annamite laws and customs, until it may be otherwise ordained."

(5) The institution of Jury has not been preserved in the text adopted.

But, enough dissertation on the matter of the drafts: we must consider them by themselves. Here we cannot enter into detail: a minute study would carry us too far; and, besides, it has already been made before the Society of comparitive Legislation with an authority to which we cannot pretend.[6] We can only point out the general features.

The drafts, as we have said, have been conceived upon the model of the French laws; but are not a copy of them. They show a methodic order which is too frequently absent from our own Codes. The authors have taken into account the gaps and obscurities which long interpretation and a system of jurisprudence already used have pointed out in our laws. On many points new ideas have been shown.

In the draft of the Penal Code, confining ourselves to the general scheme, we find first of all a system of penalties much resembling our own. In Criminal matters there exists a double scale of principal penalties (Arts. 12, 79, 80), which includes for crimes at Common Law:—Death, Penal Servitude, and Confinement; for Political Crimes:—Deportation and Detention. We should add that the penalties of penal servitude and of deportation are each of two degrees according as they are for life or temporary; and the same must be be said for Detention and Confinement, which may be, according to their duration, *major* or *minor*. Correctional penalties are, imprisonment with subjection to work, simple imprisonment, fine, ordinary Police penalties, detention (in the sense of *arrêts*) and simple police fine (Arts. 13 and 14). In the case of Correctional and simple Police Penalties, in order to facilitate the application of the rules as to the extent of the penalties, the authors of the draft have taken care to establish degrees.[7] This is an ingenious attempt to achieve that middle term between the fixidity and elasticity of penalties which every Code endeavours to attain. Article 15 enumerates a series of accessory penalties, applicable to the three orders of principal penalties.[8] Such enumeration is wrong, in our opinion, in comprising accessory penalties, *stricto sensu*, penalties called supplementary,"[9] and measures, such as publication, which, properly speaking, are not penalties.

For the calculation of the duration and execution of penalties, we find two measures which do honor to the project. The reduction of the term of preventive detention, from temporary penalties privatory of liberty, has always a place, and in very equitable proportion, varying accord-

(6) Communication of Mr. Desjardins, Professor à la Faculté de droit de Paris, on the draft of a Penal Code and a Code of Criminal Procedure for the Empire of Japan. *(Bulletin de la Société de Legislation comparée.* April, 1880, pp. 234-260).

(7) For each degree, starting from maximum or minimum, the accumulation or diminution is less than a quarter Art. 83, 85.

(8) They are:—Deprivation of civic rights, suspension of the same rights, suspension of the exercise of private rights, special surveillance by the Police, fine, special confiscation, publication of sentences.

(9) Recognized and indicated, however, by Art. 11.

ing to the gravity of the penalty (Art. 63). Preparatory liberation may be accorded to deserving convicts, when they have undergone three-fourths of their penalty, if temporary (Art. 65), or after twenty years if for life (Art. 66).

In the theory of imputability and of culpability we shall remark the following points. Penal imputability only commences with the age of twelve years accomplished (Art. 91), and does not exist for those who are deaf and dumb from their birth or from their infancy (Art. 94). Up to the age of twenty it is defined by very wise distinctions, and includes gradations not known by our law (Arts. 92, 93, 95). Repentance constitutes a cause of legal excuse. Whenever the culprit surrenders himself before any charge is lodged against him he is benefited by a diminution of punishment (Art. 96), which is further reduced if he has restored the objects stolen, or repaired the damage done (Art. 97). The Criminalist, we believe, may make some reservations as regards these last provisions.

An infraction only attempted, or which has failed is never punished as severely as an infraction achieved (Art. 125-128). Accomplices benefit by a reduction of penalty by one degree (Art. 122). The accomplice, like the coadjutor *(coauteur)*, is subject to the consequences of *objective* aggravating circumstances, but not to such as depend on any personal quality of the principal author; on the other hand, if a similar quality, not existing in the principal author, should be recognized in the accomplice, the latter would see his punishment increased (Art. 119-123); and we hold that this is a good doctrine. Extenuating circumstances, always left to the discretion of the Judge, diminish the penalty, as with ourselves, by one or two degrees (Art. 100), except in the case of a crime or delict committed by a descendant against an ancestor, in which case the reduction is only by one degree.

In the draft of the Code of Criminal Procedure, it is the preparatory instruction which most attracts our attention. The lines of procedure before the judiciary courts have, in our laws, such simplicity and precision that we can consider them as definitively settled. In our preparatory instruction on the contrary, where the law of 1670 has left its harsh imprint, some reforms, and modifications, are desirable; legitimate contradiction must be allowed to the accused. A project of law, so conceived, was presented to the French Chambers in the name of the President of the Republic, on the 27th of November, 1879.[10] Let us see what the Japanese legislator proposes.

The draft preserves the four warrants *(mandats)* which our Code places at the disposal of the judge of instruction (Art. 133-155). It might have been possible to reduce the number and thereby effect a useful simplification; but the order of committal *(mandat de dépôt)* takes the character of a provisional measure which it had originally and which is adapted to its nature. After ten days the Judge must transform it into an order of detention or set the accused at liberty with or without bail (Art. 141).

Provisional liberty, which is always in the discretion of the Judge, is never a right of the accused (Art. 230 to 237).

In the course of the instruction the accused obtains new guarantees; but it can not be said that the procedure becomes really contradictory in regard to him. He may communicate freely, except in case he be placed in solitary confinement—the operation of which is regulated as it is with us—,with his relatives, friends, and advocate (Art. 153); he is present or represented at searches or domiciliary visits (Art. 178); he may procure copies of the instrument containing his declarations (Art. 168): he may designate witnesses for his defence to the instructing Judge, and that Magistrate is bound to produce them if their number does not exceed five in correctional, and ten in criminal, proceedings (Art. 185).

During the instruction and until the final decision, a copy of the two penal codes will be held at the disposal of accused persons, in every prison where they may be detained.

All this is very liberal, but other provisions are less so. The witnesses testify out of the presence of the accused (Art. 202); and the *juge d'instruction* may confront them with him, but is not obliged to do so. No article, we believe, orders the delivery at any moment of a copy of the declarations to the accused. In criminal cases alone, Counsel for the defence after interrogatory of the accused by the President, can obtain at the registry information of and copy of the documents relating to the procedure, without taking them away (Art. 442), and the accused may before all judiciary courts demand the reading of any written depositions (Art. 337). The accused has not the right to contest the appointment of experts made by order of the Judge, or that of demanding a counter-examination (Art. 209 to 217).

During the course of the instruction, opposition is open to the accused as well as to the public prosecution:—"1st, against the decision of the *juge d'instruction* rejecting a plea or an exception as to incompetence; 2nd, against the delivery of an order to hold or to detain contrary to law; 3rd, against the concession or refusal of provisional liberty whenever the judge has not observed the conditions and forms prescribed by the law: in this respects against every decision involving an excess of power.[11]" And the combination of this text with another appears to imply the necessity of notifying all the ordinances to the accused, all possibly involving an excess of power.[12]

(10) *Journal Officiel* of the 14th and 15th of January, 1880. (p. 391 *et seq.*: 324 *et seq.*)

This opposition is carried before the Chamber of Council of the Tribunal of First Instance, which judges, with a bench of three Judges at least, upon documents and memoranda, and whose decision may be attacked before the Court of Appeal, but only when the instruction is closed, and at the same time as the order for closure (Art. 260).

The *juge d'instruction* may also be challenged, on certain pleas, by any one of the parties concerned (Art. 264-266). It is he who, as with us, closes the instruction by an order as to what proceedings if any, should follow: but a series of appeals is possible.

There is first the opposition before the chamber of council which may always be formulated by the public prosecutor (Art. 274) : in certain cases by the plaintiff: by the accused when there is question of incompetence or of sending to a criminal tribunal, and in other cases of sending, if he alleges incompetence or abuse of power (Art. 276). The public prosecutor, the plaintiff and the accused may, to the same extent, interject appeal before the Court against the decision of the chamber of council (Art. 284), and against intervening arrest. An Appeal in Cassation is possible in certain cases (Art. 295 and 539.)

Such is the ingenious, though seriously complicated, system, which the authors of the draft have devised: they have sought to afford the accused serious means of defence without retarding or enervating the action of justice. These combinations are worthy of attention; nevertheless, if the scheme were intended for the French, we should say that it appears to have done, here too much, there too little. On the one hand, we find a veritable luxury of means of appeal ; on the other, the accused is not placed in a position to combat the depositions as they are brought forward, and may long be ignorant as to their purport, being at the same time powerless to control the examination.

We should have been glad to study many other points ; but we must refrain, recommending to criminalists the study of these interesting drafts.

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(11) Art. 258.

(12) Art. 398. "In all cases where notification is made to the accused of an attackable decision, the registrar will mention in the said notification the faculty and delay of the said appeal; failing which the accused will reserve his appeal until such time as the omission has been made good.

1883.

A REPORT

ON THE

PROPOSED CRIMINAL CODES FOR THE EMPIRE OF JAPAN,

BY

MR. E. LABBÉ,

Professor to the Legal Faculty at Paris.

Extract from the *Journal de droit international privé*, Seventh year, 1880.

(Translated from the Original French, and reprinted from the "Japan Weekly Mail" of the 23rd of June, 1883).

A REPORT ON THE PROPOSED CRIMINAL CODES FOR THE EMPIRE OF JAPAN.

Translated from the French of Mr. E. Labbé, Professor to the Faculté de droit of Paris. (Extract from the *Journal de droit international privé*, Seventh year, 1880). Tokio: reprinted at the Imperial Printing Office, 1883. PROPOSED CODE for the Empire of Japan, presented to the Senate by the Minister of Justice in the eighth month of the tenth year of Meiji (August, 1877). Tokio, eighth month, twelfth year of Meiji (August, 1879).

ONE of our colleagues, whose works had been distinguished and crowned in the competitive examinations of the Institute, who occupied a chair of political economy at the Faculté de droit, whose teaching was much relished by his pupils, who was esteemed by all for his character, and who had a fine future before him, consented to respond to the appeal of a foreign Government, to expatriate himself in the extreme East, to quit friends and family, not as a deserter of the soil and interests of France, but, on the contrary, to propagate and scatter among a new or re-born people the principles of our legislation. We speak of Mr. Boissonade who, in Japan, collaborates in the preparation of codes imitated from ours. Many tried to dissuade him, at the commencement, from undertaking the task. He only took counsel from the generosity of his nature. Uniting to a sincere patriotism a still more extensive love of humanity, he has been induced by honour to be the guide of a people which is regenerating itself and whose spirit opens to the ideas of our civilisation. Animated by the faith of an apostle and by a communicative sympathy, he had what was necessary of the various qualifications for success in this work of initiation, and he has succeeded. Furnished with an instruction based upon extensive historical studies, and having also a taste for erudition, he has no mere routine attachment to tradition, to the past, or to the customs, of a single race. Endowed with intelligence, open to progress, he is preserved, by practical sense, from utopias and chimeras. Without any appearance of bodily strength, he is sustained, in his incessant application to work, by an inner zeal and ardour and by the perspective of a lofty object. He has now been living for six years at a distance from his colleagues, almost alone, only receiving tardy news from his family, having had to acclimatize himself to a different sky from ours, to change his habits of life, to create means of communication with a people of whose language he is ignorant, to make himself appreciated and known, to conquer confidence. He has become not only the beloved professor, listened to by young men favorable to new things, but, yet more, he has become the valued and authorised counsellor of officials and of the Government. His advice has been asked even outside of the circle of legislative reforms for which he was engaged. The ascendancy which he has deservedly gained is exerted to the credit of France, whose civilizing ideas and generous tendencies he represents. The less Frenchmen are inclined to follow such an example, to leave their lovely country and the advantages of a polite society, adorned and embellished by arts and letters, the more must we applaud the courage of those who submit to absence and separation from the national hearth, in order to carry afar its beneficent heat. Together with our principles is communicated the taste for the productions of our literature and industry; and our commerce will reap the harvest of the seed cast, by hardy pioneers and valiant apostles of justice, upon a young and vigorous soil.

The time which has elapsed since Mr. Boissonade's arrival in Japan has not been lost. The newspapers have already informed us that, at his reiterated instance, interrogatory torture has been suppressed. We remember having read in the *Journal des Débats* some lines emanating from a publicist who, without personal acquaintance with our colleague, prided himself that a French name should be connected, in the gratitude of the Japanese people, with such immense progress toward a more humane justice.

We have since received the text of a proposed Penal Code, presented to the Senate in 1877, and the text of a proposed Code of Criminal

Instruction, presented two years later. These drafts are, not the personal and isolated work of Mr. Boissonade, but the result of the deliberations of a Commission composed of high Japanese functionaries, with which our countryman was connected. Our colleague has done better than to edit a code imitated from ours: he has inspired, developed, and confirmed in the minds of the most notable men of the Japanese Government, the conviction of the superiority of our laws, and the desire to make changes in conformity with their teaching. Only on this condition can a durable success be hoped for. What proves that the discussions of the Commission have been serious and profound is, that upon many points the draft expresses the opinion of the minority; and according to an excellent arrangement the opinion of the minority was expressed in a special note, and the Senate was enabled to choose between two slowly worked out schemes.

We will only deal here with the Penal Code. We desire, above all, to signalize its existence, to point out its general characteristics, and to excite among Criminalists a curiosity to become acquainted with it, and a desire to subject it to a detailed study.

This Code may be considered under several aspects. It may be compared with the previous law which it is destined to replace; or it may be compared with the most perfected laws which, on the same subjects, rule the West. About the time when this reform was being worked out, a newspaper appearing in Yokohama published an exposition of the penal legislation which it erroneously supposed to be still in operation in Japan. The picture was sombre, and showed the picture of a barbarity which formed a striking contrast to the equity and mildness of the new system. According to the assertions of that journal, the editors of which are chiefly versed in financial questions and have been led into error on judicial matters, the punishments still inflicted are atrocious; the death penalty is multiplied and inflicted with refinements of cruelty; for decapitation is sometimes substituted burning, crucifixion, or sawing asunder. In this last case witnesses or passers-by would be associated with the execution; each one compelled to co-ôperate in a lingering death, preceded by horrible sufferings:—a hideous exhibition prolonged after life is extinct. Accusations are narrow and special. Punishment varies according to the social rank of the accused. A material analogy is established between crime and sentence, reminding one of the *lex talionis*. The incendiary is doomed to be burned to death. One feature characterizes the amount of liberty guaranteed: only two religious creeds are allowed; change of creed is subordinated to Government authorisation; even the secret practice of any other religion is a crime.

If from this spectacle of barbarity the thought returns to the proposed Code, the difference is so great that one is terrified at the depth of the abyss which separates them.

Henceforth no torture will be added to privation of life. The execution of the death penalty will take place in the interior of the prison without that publicity which with us gives rise to so many scandals, and depraves the spectators. The provisions made are general: they take no account of the previous condition, of the hereditary nobility, of the culprit, unless so far as the position which he occupies may be held to be an aggravation of his offence. Repression will be in proportion only to the culpability of the actions committed. Liberty of faith will exist; missionary efforts will be allowed. Desertion of the belief handed down by one's ancestors will no longer be held criminal. The only deed punishable in this connection is disturbance offered to the exercise of a recognized religion.

The opposition between the system which, according to the *Echo du Japon*, is to be abrogated and the law which will succeed it, is so marked, that one asks if ever an example has been given of such an abrupt passage from barbarism to civilization.

Any uneasiness to which this state of things may give rise as regards the success of the reform may be calmed. The *Echo du Japon* is in error: it has awakened the recollection of old customs, and has not been informed of the notable changes already accomplished. We have received, from a Japanese—as enlightened as he is judicious—*Attaché* to the Legation of his country in France, some information on this subject which inspires us with full confidence, and which we deem it useful to summarize.[1]

The Penal Code, from which the *Echo du Japon* has published some extracts, goes back to the eighteenth century. It dates from the epoch when a powerful feudalism had succeeded in reducing almost to naught the authority of the Emperor; when the actual Government was exercised by a military chief, Shogun, whose office was hereditary in a house invested with a preponderating influence among the noble families of the Empire.

This political system ceased in 1868; feudality has been overthrown; the Shogunate has been suppressed; the Emperor has recovered a real power, and governs with Ministers for agents and a Senate for a council. This political transformation of power has rëacted almost immediately upon penal legislation. From the year 1868 the Emperor abolished the most cruel penalties, such as sawing asunder, burning, public exposure, branding. He retained, provisionally, crucifixion, but only in the case of a

(1) We thank Mr. Hirayama for the kindness with which he placed himself at our disposal, and we must say that, if his explanations are of a kind to inspire hope in the success of the reforms undertaken, the knowledge of his character and of his vivid and clear intelligence should present a favorable augury of the future of a people which sends such representatives abroad.

servant murdering his master. He ordered the compilation of a New Code, which was promulgated on the 9th of February, 1871. This Code, inspired principally by very ancient Japanese and Chinese Codes, realised already a notable alleviation. The penalties used to be [2] five in number:—Death (by decapitation or strangulation), deportation, penal servitude, the bamboo, and the whip.

In the case of *shizoku*, or members of the lower nobility, these punishments were replaced as follows:—Death, by voluntary disembowelment; penal servitude, the bamboo, and the whip were replaced by detention, the more or less prolonged loss of liberty.

But if the infractions committed by *shizoku* were of such a kind as to compromise their honor, the culprits were degraded and subjected to the penalties of common law.

Prosecution and condemnation of high functionaries and of *kwazoku*, or members of the higher nobility, were subordinate to the preliminary decision of the Emperor.

This Code, remaining faithful to the traditional customs of Japan, punished more severely offences committed by descendants upon their ancestors and by servants upon their masters.

Greater frequency of relation with Europe brought fresh ameliorations. A revision of the Penal Code was undertaken, and was achieved in 1873.

The number of crimes involving the pain of death was considerably diminished. The penalties of deportation, penal servitude, bamboo and whip were replaced by one penalty—correctional labor on a graduated scale from ten days to life. Disembowelment, which had not been once ordered since 1868, has disappeared from the text of the penal laws. Since 1873 capital punishment has been inflicted within the prisons and not in public.

In 1876 a law prescribed that convictions should be based on proofs other than the confession of the accused, and abolished the employment of interrogatory torture.

Let us conclude with a word on the religious question, the solution of which reveals with sufficient exactness the extent of liberty possessed by a people.

Two recognized creeds—Shintoism and Buddhism—exist in Japan. All the middle and upper classes belong to the one, as the common sorts do to the other. But they are very tolerant, often indifferent; they are specially amenable to the influence of the moral philosophy of Confucius.

Under the feudal system, when power was in the hands of the Shogunate, Christianity, particularly Catholicism, was proscribed. The prohibition to teach it survived the political reforms of 1868. The new Government at first attempted to make some thousands of native Christians, settled in the neighborhood of Nagasaki, objure their faith. It dispersed them in groups throughout various provinces. But recognizing the futility of efforts to that end, the Emperor, by decree of the 14th of March, 1873, restored them to liberty, and permitted them to return to their homes. Since then complete tolerance exists. Christian churches are set up in the middle of the capital of the Empire. Natives, converted by foreign missionaries, travel through the provinces to propagate their new belief.

Such is the social and religious situation wherefrom a reform, prepared and rendered easy by former progress, is being produced and worked out. The mind is reassured: confidence is restored. Changes and improvements are noticed; one is no longer frightened by the thought of an insurmountable interval.

The points on which the new Code appears to wander from still prevailing manners are the following:—Differences of rank continue to exist in society, there are a low and a high nobility. Side by side with this social inequality, equality will reign in the penal law. Crime will imply to some extent, as a consequence, destitution of any privilege belonging to nobility. Nobles and high functionaries can no longer be protected from criminal prosecution by decision of the Emperor. The relations of descendant and ancestor, of servant and master, between the culprit and the victim of the crime, will no longer be so generally a cause of aggravation of penalty. They will only preserve that character in those restricted cases in which the peoples of the West have admitted that that circumstance really increases the culpability. Further, the sentiments of respect and fidelity which the present legislation supposes and wishes to maintain in this matter, are so pure and so natural that they could not in any case hinder civilization in its flight.

We are not in a position to appreciate exactly whether all the proposed changes respond to a transformation already effected in the ideas and manners of the nation. We must not forget, however, that the social reform which is being accomplished in Japan has been desired, if not by the whole mass, at least by a considerable portion, of the population, and not by a sole chief in advance of his contemporaries, nor that the draft of the Penal Code has been prepared, not by foreign commissioners, but by Japanese converted to new principles of Government. In fine, the scholars who have come from that country to our schools in France have shown, at the same time, so sagacious an intelligence and so energetic a will, that the race appears to us to contain in itself precious resources of progress and of development. Let us hope that the future will justify these favorable auguries.

It is in other respects evident, that the numerous phases which our own legislation has traversed have been imposed upon us more by distrust of the unknown, and the fear of compromising attempts, than by the necessity of advancing step

(2) Anterior to the Shogunate and the feudal régime.

by step. A people, having before its eyes the results of past experience, can advance with greater rapidity and resolution towards a correct solution.

We express these ideas without wishing to pronounce upon a problem for the solution of which we do not possess all the elements. But we can draw with more certainty a parallel, that will be, we believe, of some interest, between this draft and European law.[3]

One feature appears to us to prevail in the establishment of penalties : a greater number of degrees in the scale of punishment than in our Code.

This is a consequence of the fact that the modern legislator, guided by science, measures with greater exactitude the different degrees of abstract criminality.

Our Code, which has often been criticized on this point, assimilates, for example, under certain conditions, the crime attempted with the crime consummated; enacts the same penalty for authors and accomplices. This simple and somewhat Draconian proceeding omits all shades that are not shades of kind, which can be determined beforehand.

To succeed in multiplying the degrees of penality, the draft makes a noteworthy distinction between major and minor imprisonment. The duration of a punishment is accepted as the supreme criterion of its severity. Other repressive provisions contribute to it, but a penalty involving loss of liberty is never considered heavier than another when it is shorter. Thus, minor imprisonment lasts from six to ten years, major imprisonment from eleven to fifteen years, penal servitude from sixteen to twenty years. This graduated scale permits the legislator the more easily to proportion repression to criminality, and to decide beforehand that, in such or such aggravating or extenuating circumstances, the legal penalty may be increased or lowered by one or several degrees. This graduation of penalties is imitated from the Italian Code, but with greater simplicity, and a nearer approach to our own system.[4]

From another point of view we find an improvement, consisting also in a better observed apportionment. According to our law, a correctional penalty is limited to five years, a criminal penalty to twenty years. The leap is abrupt; and, if one reckons years of flight and anxiety as chastisement, the contumacious person condemned to six years of seclusion, is too harshly treated, comparatively with him who has incurred five years' imprisonment by default. The draft fixes the term of prescription at thirty years for the death penalty : twenty-five years for penal servitude for life, and descends thus gradually according to the gravity of the penalties. The innovation is felicitous and logical.

Our law does not set up, *a priori*, as extenuating circumstance the fact that the culprit has denounced himself, or the fact that the culprit has made total or partial reparation for damage done by him. Yet society has great interest in inciting to such acts by a promise of mitigation of sentence. Such acts are, moreover, indicative, if not of repentance, at least of a less obstinate perversity. The draft which we are studying makes good this omission, and reduces the penalty by one or two degrees according to the case.[5]

The important distinction between co-authors and simple accomplices, attempted with difficulty by jurisprudence, has been forgotten by our own legislators. It will pass very clearly and precisely into Japanese law, as it figures already in the Italian and Russian Codes.[6]

Our principle of non-accumulation of penalties in case of repetition of crimes or delicts is simple in practice; but it does not answer to perfect justice; for it cannot be denied that criminality increases with the number of offences. The majority of official legal compilers have accepted our rule, which is of convenient application. The minority have elaborated a somewhat complicated system, accepting cumulation for temporary penalties, but avoiding any transition of life penalties, which cannot accumulate.

Below sixteen years, in our law, no limit of age is set for the commencement of penal responsibility. The Japanese draft fixes twelve years, but it inflicts, even below that age, ordinary or corrective imprisonment, dealing in the same way with those below sixteen who have acted without discernment. The word imprisonment, and the idea of privation of liberty with a view to repression which is attached to it, appear to us to be in discord with the end in view. It is a question of substituting education by Society for education by the Family. Could one say of a child whose father places and keeps it in a house of instruction, that it is undergoing imprisonment? We regret also that, respecting the minor of sixteen who is held to have acted with discernment, the Court has not been invested with the power of following up the penal imprisonment, which may be of short duration, by measures of guardianship and education which, in the case of one who has acted without discernment, may be prolonged until he is

(3) See an excellent contribution made to the Society of Comparative Legislation by Mr. Desjardins, Professor of Criminal Law to the Legal Faculty of Paris. Bulletin, No. 4, April, 1880.

(4) Italian Code of 1859, Art. 52 *et seq.*, edited and translated by Nypels, p. 244.

(5) A like provision already exists; and even in the synopsis of the old Japanese laws prepared by the *Echo du Japon* we read — "The penalty is reduced by one degree when the offender gives himself up to Justice."

(6) Italian Code of 1859, Art. 106. Russian Code of 1851, modified in 1854. Par. 34 and 35. Edited and translated, Nypels, pp. 648 and 508. In this respect there is occasion to fear the resistance of opposite custom. Present legislation is nearly identical; and in the old laws of Japan we find provisions which rather exaggerate inversely the distinction between the intellectual co-author, and the agent of execution. "One who commits a murder at the instigation of another shall be deported. The instigator shall be hung. He who starts a fire at the instigation of another is decapitated. The instigator is punished by burning to death."

twenty years old. It is strange that deprivation of liberty, inflicted for any reason on a minor who has acted without discernment, should be longer than that imposed upon one in whom acknowledged discernment implies a more accentuated culpability. The latter ought not to inspire society with less distrust than the former on the ground of a bad education. The reform that we indicate has not yet been accomplished in French law; but it has already impressed itself on the minds of men, and is impatiently awaited.[7] Let Japan precede us in this salutary path!

We have not exhausted the subjects of interesting comparison. The period of preventive detention counts, in a measure, in the sentence passed. Provisional liberation of the convict who has undergone the greater part of his penalty prepares his return to complete freedom, etc., etc.

Some provisions prove that the compilers were as fully concerned as they ought to have been with the special conditions of Japanese society, with the manners to which the new Code had to be adapted.

The severe prohibition of the introduction, manufacture, and sale of opium; the importance attached to the prevention of piracy; criminal participation in suicide; incendiarism through carelessness magnified to a delict; offer peculiarities which transform an abstract conception into a living work, seriously applicable to a determined people.

In sum, and with rare exceptions, when one considers the provisions of this scheme elaborated by a Commission of Japanese, presented with great chance of success before the Senate of their country, one fancies he is reading the text of a European legislation: one has, in a measure, before one's eyes one of those schemes which the most advanced science presents to the legislators of the West. One is pleased with the diffusion of light over the whole surface of the globe, and feels almost ashamed to speak of ameliorations which our own jurists have counselled, but our legislators have not yet taken the time to effect.

At least we may claim for our glory the influence exercised by one of our colleagues. His devotion, his indefatigable zeal, the confidence that he has inspired, are merits belonging to himself alone. But Mr. Boissonade recognizes that he is the representative and propagator of the ideas of his nation; and when he returns among us, our duty will be to recompense him for efforts courageously and nobly accomplished in order to introduce and to found, among a people which for its legislative reforms has directed towards us its sympathetic regards, juridical institutions that are a faithful reflex of our civilization and social conditions.

(7) Reports of the Commission of Inquiry appointed by the National Assembly, the 25th of March, 1872, to study the system of penitentiary establishments. The reports were furnished on the 18th of March, 1873.

1883.

THE NEW PENAL LEGISLATION OF JAPAN,

BY

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Extract from *La Revue de droit international et de législation comparée.*

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THE NEW PENAL LEGISLATION OF JAPAN.[1]

(Translated from the French of Mr. G.A. van Hamel, Professor in the University of Amsterdam. Extract from *La Révue de droit internationale et de législation comparée).* Brussels, Muquardt & Co., Booksellers to the King of the Belgians and the Count of Flanders, 1882.

It is ever interesting to study the legislative work of a great people which is realizing vast reforms in the domain of law and judiciary institutions. The interest augments, when the case is that of a people which, so far, has lived in a certain isolation, has had its own separate history, has not grown with the nations of Europe, and has not participated in those vicissitudes through which European civilization has passed between the decay of the Roman Empire and our own days.

In effect, in this lapse of fourteen centuries there have occurred great movements, great crises, which the tribes that peopled, and the states that have formed and at present form Europe, have felt, without exception, more or less. This is specially true in regard to the development of Penal Law and Criminal Procedure. Private vengeance, Compositions, the influence of Roman Law, Canonical Law, Philosophy; the Land System, the Prison System; Accusatory Procedure, Inquisitorial Procedure; Torture, Secret Procedure, Publicity of Pleading:—so many phases in the history of Criminal Law, through which almost all European peoples have passed together.

Doubtless their Criminal Codes and (systems of) Criminal Instruction present, in the very nature of things, a great diversity, not merely in their details. But, if we abide by the general features that I have just signalized, it is impossible to contest their close resemblance, due to history and sanctioned by it.

Let us compare with this European society (and I include here America, the child of Europe) an Asiatic people which has known nothing either of our traditions or our crises, whose civilization is anterior to ours, which has developed itself far from us and without us, and which, in entering only a few years since into regular intercourse with the States of Europe, found the latter nearly the same as it still sees them. If we compare these States with members of a large family, who for the most part have grown up together, we shall see in Japan a child which has been educated away from home, and has only rejoined the family at a more advanced age.

This people, in the first instance timid and suspicious, is more and more desirous to enter into relations with us. It is making itself acquainted with our laws and institutions. It desires to adapt them, without, however, sacrificing its originality, without losing sight of its past history, its peculiar needs, its character, and its proper tendencies. It ought, therefore, to be interesting to watch this people at work. It is about to choose from among the various legislations as much material as it needs to borrow from them; and, for as much as it needs not, it will mix its own riches with those that Europe furnishes.

To the theoretical scientific interest that the study of Japanese Codes of recent date affords us, is added a considerable practical interest.

Japan, when concluding international treaties of commerce and friendship, was both obliged and willing *(a dû et voulu)* to resign herself to

(1) The Editors of the *Révue de droit internationale, etc.*, mention that in their periodical has already appeared a short notice by Mr. Lefort upon the "Reform of Penal Law in Japan." They add that the more profound study of Mr. Van Hamel, "though conceived in a spirit that may perhaps be found more or less optimist" appears to them to merit publicity.

recognize, in its fullest extent,[2] the privilege of exterritoriality as regards jurisdiction over aliens residing on her territory. The Consuls or Consular Courts of the different foreign States take upon themselves a portion of that task which, according to the ordinary rules of International Law, should not be confided to any other person than a Japanese Judge himself.

The law administered by the Foreign Judges is that of their own nations. The consequences of the principle of exterritoriality are well known. In civil causes the plaintiff, whatever be his nationality, follows the Judge and the law of the defendant's nationality, be he foreign or indigen. In penal cases, the nationality of the author of the offence, be he native or alien, determines the tribunal which shall take cognizance of it, the procedure to be followed, and the penal law to be applied. It would be superfluous to revise here all the difficulties that the administration of Justice must necessarily encounter under such a system. The learned English jurisconsult, Sir Travers Twiss, in the remarkable memoir which he read last year at the ninth Conference of the Association for the Reform and Codification of the Law of Nations, gave some eloquent details on this subject.[3] I need only add, concerning Criminal Law, a remarkable trait, communicated in the Berne Conference by Mr. M. N. Iriye, of Tokio, proving, as might have been presumed, that sometimes, almost necessarily, crimes remain unpunished, specially if they be directed against the institutions of the land. An English subject had once fabricated false paper money so closely resembling the national currency, that to be deceived by it was very easy. The English Authorities exhorted their countryman to renounce his experiments; but no interpretation of the English Penal Code can punish such a crime committed in Japan; and a criminal suit was impossible.[4]

It is in penal cases that the diversity of the laws governing Procedure and Judgment causes the most harmful effects. Whereas in matters of Common Law the agreements and stipulations of the parties may remedy to a great extent the defects of jurisdiction, the public character of Penal Law excludes from its domain all transactions, all means of redress, which depend only upon the will of an individual.

Further, Criminal Law is pre-eminently territorial. It is there that the principle of territoriality triumphed first and wholly over the principle of the personality of laws. The administration of Penal Justice is the mainstay of public order, the protection of right against the most dangerous attacks and such as threaten general security. A State, proud of its rights because it appreciates the full scope of its duties, should be jealous of this portion of its functions. All those who reside upon the territory of a State are irrevocably subject to the Penal Laws of the country, are treated according to its procedure, judged by its Judges. This is a principle generally recognized; and the exception of exterritoriality can nowhere weigh more heavily than in this respect.

It is natural, indeed—it is praiseworthy—that Japan should seek to free herself from this burden. At the epoch of the treaties she would have repulsed foreigners if she could. Compelled to admit them, she willingly left to them the care of adjudicating on their compatriots. But under the new *régime*, established since 1867, an exceptional situation of such momentous bearing is not to be endured for ever.

Although the sovereignty of the Empire may not be personally infringed, its dignity suffers. It has demanded the revision of the treaties, and submitted to the Powers formal propositions to that end.

Negotiations have been opened, and at the moment of writing this, the representatives of the Occidental Powers are deliberating, in Japan, to arrange a common base whereon each one of them may found stipulations for a new treaty. Japanese diplomacy will neglect nothing that may contribute to the final end which it desires —the absolute emancipation of the Empire, the achievement of the right to march on an equality with other civilized States.

The Envoy of the Mikado now at the Court of St. James demanded personally, in 1876, at the Frankfort Conference, that the Association for the Reform and Codification of the Law of Nations should take up this subject. The Association made it the theme of its discussions, as well during the Conference in question as at those held in London in 1879, in Berne, 1880, and, as I remarked above, Cologne, 1881. The diplomacy of Japan has continued to follow these discussions with a lively interest; and the honorable English Secretary of the Japanese Legation in London, Mr. Stuart Lane, took personally a large share in them.

On the other hand, it is part of the duty of the Occidental States to renounce only with extreme caution rights once acquired. That which induced Europe and America to stipulate for exterritoriality was the distrust excited in them by the administration of justice, according to the laws and by the judges of Japan. Will it be easy to inspire confidence? This is a difficult question to solve, specially as regards Penal Jurisdiction.

(2) As regards the Netherlands, see the Treaty of Nagasaki of the 30th of January, 1856, with the additional clauses of the 16th of October, 1857, and that of Yedo of the 18th of August, 1858. The system of exterritoriality was only formally stipulated for and amply developed by Art. 5 of the last mentioned treaty. The first merely contained the general rule that the authorities in Japan should not meddle in disputes between strangers; and that, in view of trouble between Dutchmen and Japanese, even such as bore the character of a crime, the authorities on both sides should endeavor to bring matters to an amicable solution.—The treaties concluded with the other powers date from about the same period. They were arranged by the Shogun or Taikun, and sanctioned by the Mikado in 1865. America revised several stipulations of her treaty on the 25th of July, 1878; but the scheme of exterritorial jurisdiction remained intact.

(3) Report of the Ninth Annual Conference, p. 129.

(4) Report of the Eighth Annual Conference, p. 53.

I observed, just now, that the public character of Penal Law renders exterritoriality less supportable in criminal than in civil matters. This same character, on the other hand, contributes to render the abolition of exterritoriality the more dangerous. The application of Penal Law should rest entirely and exclusively with the authorities and the laws of the country. It would be impossible to neutralize its defects by any stipulation whatever.

But Japan desires to merit the equal treatment that she demands. The Administration of Justice commences by the promulgation of laws, and Japan has undertaken to revise her legislation. She has chosen to begin with criminal legislation, for what reason I know not. It is true, perhaps, "that, in theory at least, the assimilation of the Japanese Penal Code to European Codes appears to present more difficulties than the assimilation of a Civil and Commercial Code, because the East and the West differ more in their estimate of crime than of civil wrong."[5] On the other hand, Civil Law is much more complicated, insomuch that it concerns itself with great civil institutions, such as marriage, succession, landed property, on which national ideas are more deeply rooted than in other respects. May be, also, as I said above, the need to be delivered from the exterritorial system is felt the more when the maintenance of public order is in question. As I write, the Japanese authorities are preparing the project of a Civil Code; and the reform of Criminal Law is already an accomplished fact.[6]

The new Penal Code and the new Code of Criminal Procedure were determined and promulgated, according to their titles, by decrees of the Sovereign, Nos. 36 and 37 in the seventh month of the eleventh year of Meiji—that is to say in the month of July, 1880.[7] An official French translation was published by the Imperial Printing Office in Tokio, in the third month of the 14th year of Meiji, that is to say in the month of March, 1881. Next, conformably to a decree issued in the course of last year, the two codes were introduced and came into legal operation on the 1st of January, 1882.[8]

Although the Government of Japan, as it appears, has not circulated its codes *(n'ait pas livré ses codes à la librarie)* I know, nevertheless, that it is very anxious that Europe should take notice of them. It is partly by means of these codes that it hopes to achieve territorial jurisdiction. Copies have been sent to all the legations of Japan and to foreign Governments.[9]

No statement of motives has been published. No preface indicates how the Codes have been composed, who drafted them, and from what sources the compilers drew. The text must, then, suffice us for the investigation of some of their contents.

I.

The Penal Code of 1880 does not mark the first step taken by Japan in the field of legislative reform since the opening of the era of Meiji. As early as 1871 a first Penal Code had regulated the complicated condition of the Penal Law previously obtaining, and had corrected its defects in many respects. Particularly after the revision of this Code in 1873 did the old penal system lose much of its cruelty and barbarities. This work, however, could only be a work of transition. According to Mr. Reed[10] the Code of 1871 remained founded upon the old Chinese Codes of Ming and T'sing; and Sir Travers Twiss, who had occasion to take notice of a published summary,[11] declared it insufficient from a European point of view.[12]

It may be said that the Code of 1880 is composed in the spirit common to the existing Legislations of Europe. As to the general system, the preponderating influence of the French Penal Code is incontestible. The tripartite division into Crimes, Delicts, and Contraventions *(Crimes, délits, et contraventions)* has been borrowed therefrom by Japan as by so many other States. However, since Japan has not adopted trial by jury, she might have done as Holland has in her new Code, and abandoned the distinction between Crimes and Delicts, "a distinction of convenience and not of obligation," as Mr. Ortolan remarks, and which has done more harm then good to healthy ideas of

(5) Sir Travers Twiss. *Op. cit.* p. 137.

(6) A Penal Code of 1871, amended in 1873, had already ameliorated in many respects the rigour and cruelty of the former Penal System; but this was only a first step.

(7) The *Nengo Meiji* (era of the publication) is reckoned from October, 1868. The Calendar of Japan does not differ from ours. January is the first month: December the last. But the first year of the *Meiji* epoch did not contain twelve months.

(8) I am indebted for this last positive information, as well as for other that I have given on the subject of dates, to the Legation of Japan in London. I desire to name my authority because of an incident which otherwise might throw a doubt on the accuracy of my intelligence. In a German juridical Review, *der Gerichtssaal*, Vol. XXXIII, p. 381 *et seq.*, a learned and eminent crimimal lawyer (*criminaliste*), Professor A. Berner, of Berlin, writes that he has been consulted upon a *draft* of a Penal Code which was submitted to his opinion on the 4th of *January*, 1881; and in a letter which my illustrious colleague did me the honor to write to me he maintains the accuracy of that date, adding that he has under his eyes a manuscript in the French language, while his two Japanese collaborators, Messrs. Murata, Secretary of the Council of State, and Mr. Gurzi Tanahasi, attached to the Legation in Berlin, consulted copies printed in the Japanese language. Their deliberations lasted three months, and were extended to a project for Crimimal Procedure. But, as I have just said, the Codes had been promulgated as established law many months before the 4th of January above mentioned; and the French translation appeared in Tokio in the month of March following. I can only reconcile this contradiction by assuming that the Government of Japan only awaited the opinion of Mr. Berner to decide if the codes should be introduced and at what date.

(9) I take pleasure in mentioning here the kindness of His Excellency Nagaoka, Japanese Minister at the Hague, who lent me a copy of the Penal Code, and the goodness of His Excellency the Minister of Foreign Affairs in my own country, who placed at my disposal the copy of the Code of Criminal Procedure furnished to his Department.—To the expression of my gratitude toward these authorities I wish to join my thanks to H.E. the Minister for Japan in London for his solicitude that I should be duly informed: to Mr. Stuart Lane, his Secretary of Legation; and, finally, to the Baron de Hogendorp, *Chef de Bureau* in our Ministry of Foreign Affairs, for the information with which they have been good enough to supply me.

(10) Sir Edw. J. Reed, *Japan* I., p. 323.

(11) Published by Mr. Joseph H. Longford, of the British Legation, and inserted in the *Transactions of the Asiatic Society of Japan*.

(12) In his paper read at the Congress of Cologne.

Penal Law. Still the French Code has not been followed in its integrity: the German Code, Italian Drafts, English Law, seem to have left more than one trace, as we shall soon see.

The Code contains 430 Articles, divided into four Books:—I. General Provisions; II. On Crimes and Delicts against the Common wealth; III. On Crimes and Delicts against the persons and property of individuals; IV. On Contraventions. This division is not irreproachable, inasmuch as the title of Books II. and III. at bottom corresponds with a subdivision of the general division; but it is deserving of remark and praise that the first Book contains all the dogmas so called "General Dogmas," in that, according to commonly received opinion, they belong to material law. From this point of view much more unity reigns in the Japanese Code than in the French or even the German. The Books are divided into Chapters—many Chapters are subdivided into Sections.

To judge from the translation, the authors of the Japanese Code have conscientiously completed the drafting. In the very first Article:—"Infractions punishable by virtue of the Law are of three degrees," is more correct than the first Article of the French Code; because in point of fact it is not laws which punish. In the same way, after having laid down the principle that the Law has no retroactive effect in regard to infractions committed before its promulgation, the Code adds an exception which we look for in vain in the French Code:—"that the most lenient provisions of a new law are applicable to infractions committed before promulgation and not yet adjudicated." And in this very phrase the terms "the most lenient provisions of a new law" are more correct than those of the corresponding Article in the German Code which speaks of "the most lenient law;" for it may well happen that the same law may contain provisions more lenient and more severe at the same time. In my quality of Dutchman, I should feel flattered if I had the right to presume that the almost identical wording of our new Code had served as a model here.

But let us quit these details, which I quote simply as proofs of the care with which the work has been done. It is a question of the great principles. It is in the first place a question of the foundation of all Penal Jurisdiction, categorically expressed in Article 2:—"No action can be punished except in virtue of an express provision of the Law," that is to say, according to Article 3, of a law anterior to the infraction. No arbitrary jurisdiction: no creation of crimes afterwards: the Law alone can be the source of Penal Law. The Law, that is the fundamental law above all else in penal matters, except in the case of persons amenable to military and naval laws, is "*the present Code.*" Nevertheless, there may be, as in every other State, other laws and regulations beside the Code. "Peculiar penalties provided by special laws and regulations shall always be applicable for all that is not otherwise provided for in the Code" (Art. 5). "Infractions of the regulations made by local administrative authority (in so far as they are not foreseen in the fourth Book of the Code) shall be punished in conformity with the said regulations" (Art. 430). "In all cases the *General Provisions* of the present Code shall apply to all special laws and regulations which do not contain provisions to the contrary" (Art. 5). Thus, in Japan as elsewhere, it is necessary to supply the inevitable defects of codification. Japan has, then, used the liberty that each State ought to reserve for itself. This liberty should be respected. If the Code, in its enumeration of Crimes, Delicts, and Contraventions, is as complete as ordinary Justice can require, the exceptions mentioned should not of themselves arouse any distrust. If the special laws of Japan are to be feared because the legislative power is not organized according to a constitutional system, I have only to mention Russia to recall a European State which is treated as a peer, and which will perhaps wait even longer than Japan for the advent of a constitutional system.[13]

From the fundamental principle, there is, above all things, question in a Penal Code of three cardinal points:—the choice of penalties; the scientific value of the Code as judged according to the manner in which it treats general dogmas; its legislative value as judged from the manner in which the various crimes and delicts have been enumerated and defined.

1.—The enumeration of *penalties*, in Articles 6 to 10, reminds one of the French system, but not without original modifications.

The Pain of Death occupies the first place among the *Principal Penalties of Crimes*. It is executed in the English manner, by hanging; and further, according to the English system, adopted at the present day in Germany, the execution takes place in the interior of a prison in presence of persons designated. The number of crimes to which the pain of death is awarded is not excessive. It affects crimes of high treason only in cases of attacks achieved or attempted upon the person of the Emperor, Empress, Empress-dowager, or Prince Imperial, heir presumptive to the throne: attacks consummated (not merely attempted) upon the person of a member of the Imperial family: participation as instigator or commander-in-chief in civil war or armed insurrection whose object is to overthrow the Government of the country; and—for Japanese subjects—bearing arms against the nation or its allies, and rendering direct assist-

(13) The legislative power in Japan is wielded by the Emperor through his Grand Council of Ministers (*Dai-jo-Kwan*), and with certain restrictions by the *Genro-in* or Senate. It appears to be part of the intention of the Government to prepare, slowly, a constitutional system. See Sir Edw. J. Reed, *Japan*, I., p. 365. The papers have spoken of it in connection with a voyage recently undertaken by one of the high functionaries of the Empire, who is thought to be going to study the different constitutions of Europe.

ance to an enemy. Next come, as in many other legislations, assassination; actual poisoning, that is to say murder by means of poison: murder preceded or accompanied by acts of barbarity: murder having for its aim to prepare or facilitate another crime or misdeed contemplated by its author or to aid in his impunity: parricide in the sense of the French Code—murder of any ancestor *(ascendant.)*: wilful incendiarism of inhabited edifices, or which serve as habitation to another, ships, boats, or railway carriages containing travellers. There are other capital offences not perhaps generally considered as meriting the extreme penalty of the Code; but no one has the right to reproach the Japanese Code, because of these instances, with exceptional or unjust severity. They are murder, and burning of edifices, houses, shops, ships or vessels by persons assembled in seditious bands, the penalty attaching alike to the direct authors of the crimes and the chiefs and ring-leaders of the bands in question, if having had cognizance of these acts they have not prevented them: throwing a train off the rails, or shipwreck caused wilfully and with culpable intent, if the death of a person ensues (often a deliberate case of assassination): false witness against an individual who has been condemned to death and executed, if the false witness is convicted of having had the intention of bringing about the capital condemnation (at bottom a case of assassination): the act of him who has wilfully caused to sink or founder any ship or vessel cantaining people, if the death of a man ensues therefrom; and even robbery with violence if homicide is a result.

The infraction provided for by Articles 363 and 364 deserves to be particularly signalized, because these Articles, like many others, bear witness to the great value that Japanese legislation attaches to family ties, especially in the ancestral line. The pain of death is pronounced as the reward of every unjust and wilful act of a descendant, resulting in the death of an ancestor: blows and wounds, sequestration, threats, abandonment, privation of sufficient nourishment and other attentions necessary to health, calumny, or even defamation. But the Code goes further, too far in my opinion. Not only is the principle enunciated in the French Penal Code, that "parricide is never excusable," recognized: it is enlarged by article 365:—"No excuses or *exemption from special penalties* in cases of murder and blows and wounds can be admitted in favor of descendants guilty of these or other misdeeds towards their ancestors." And as the justifying fact of legitimate self-defence, according to the example of the French Code, is classed among these special exemptions, one may ask if the rights of justice have not been here sacrificed to patriarchal traditions. The principle of fraud is safeguarded by the words, "except in cases where the descendants may have ignored the quality of the victim at the moment of the action;" but the juridic fault does none the less exist. To be able to excuse that fault, we must believe that the fathers of families in Japan never forget themselves towards wives and children, and that the odious family scenes which criminal justice sometimes unveils in Europe, scenes wherein the fathers alone are culpable, are unknown there.

I thought it best to give first of all the complete list of capital offences. Attempt is punished with a lighter penalty than crime achieved; and, although the Code recognizes causes in aggravation of punishment by the gradual augmentation of penalties, it contains the formal prescription that the pain of death must never be pronounced as an effect of such augmentation.

Corporal punishments have not been pronounced against any breach of the law. Perhaps the right to apply them in preservation of discipline in the prisons has been reserved; for "a General Regulation" determines the method and details of the execution of each penalty, and the disciplinary system for convicts.

If even such (corporal punishment) means of discipline may be necessary in Japan, as indeed they are employed in many German States, we have no reason to fear that abuses will be authorized by a Government which has conferred on its people a Code so exempt from all cruelty. It would, however, do well to publish its General Regulations on the execution of penalties, which, in reality, are a complement of its Code.

The principal penalties for crime are, next to the pain of death, for common crimes:—*Penal Servitude*, employment upon "works determined by the regulations," for men in an island, for women and girls in a prison situated in the interior of the country, whether *for life* or *for a term*—from twelve to fifteen years:—next, *Confinement*, in a prison situated in the interior of the country, where the convicts are subject to toil determined by the regulations, whether in *major* confinement, from nine to eleven years, or *minor* confinement, from six to eight years. *Political* criminal penalties are, below the death ferfeit:—*Deportation*, that is to say transportation to an island, where the convicts are kept in a special prison without being obliged to work, or after a certain time, on the decision of the Government, outside the prison in an allotted portion of the isle. This is for *life*, or *a term*—sixteen to twenty years. Next, *Detention* in a special prison situated in the interior of the country, also without enforced labor, be it *major* detention from nine to eleven years, or *minor* detention from six to eight years. We have here, in sum, the penalties, and distinctions of penalties, that are found in many European legislations, and Japan has been able to choose more easily than Occidental States, in consequence of the quantity of islets which belong to her. Work for persons condemned to penal servitude or confinement

will be determined by the "regulations;" and what I have said above upon the necessity of a publication of the regulations is also applicable here. It seems curious that the Code, in Articles 19 and 22, prescribes, solely for convicts who are more than sixty years old, that "they shall be subjected to such labor as is proportioned to their strength;" as if the work of the other prisoners might surpass *their* powers; but I choose to believe that, by these words, the authors of the Code have simply meant to give a formal and special direction to what should be contained in the regulations with regard to aged convicts.—The principal penalties for misdemeanor are:—*Imprisonment* in a House of Correction, whether with enforced labor, *major* imprisonment, or without work, *minor* imprisonment, two penalties whose maximum and minimum are determined by law, for each breach, between eleven days and five years; and correctional *Fine*.—The penalties for Contraventions *(contraventions)* are *Detention (Arrêts)* in a House of Detention without enforced labor, and simple police *Fine*. The fines which are not paid within a certain delay may be converted into simple imprisonment or detention. *Cellular* detention (solitary confinement) is not prescribed in the Code: perhaps the General Regulations, mentioned above, contain prescriptions on this subject. All the more reason to desire to be acquainted with them. But as solitary confinement is not a special manner of inflicting the penalty of imprisonment, but quite a peculiar punishment, a penalty which has its own character and ought to exercise a preponderating influence upon the whole penal system wherever it is adopted, it is not in a simple set of regulations, but in the Code itself, that it ought to be promulgated. If it is to be introduced into Japan, the Code should have contained at least some general indications, as to its duration, as is the case in the German Code. For, if in Japan only houses for confinement and ordinary imprisonment, where criminals of all kinds are shut up in bad company, are recognized, the Code, were it even a thousand times better than it is, would give nothing but bad results.

Accessory penalties are, with trifling variations, what they are elsewhere. The system abounds in detail: privation of civic rights, interdiction of private rights, special surveillance by the police, fine, and special confiscation.

Although in my own country, and there since 1813, we have abolished the High Police surveillance of the French Code, I will not reproach Japan with having maintained that guarantee of public security which, if the condition of the country, render it necessary, and if it be well administered—if it be directed against dangerous criminals and not political antagonists—may be of great utility. But the reproach that, as a Criminalist, I do make to the new code, is the maintenance of infamous penalties—as in Art. 32:—"Every one condemned to a criminal penalty incurs, as of course, *perpetual* privation of *all* his civic rights." Such is the French system, I am aware,—a system with which even the German code has not entirely broken; but it is an indefensible system, and one which for many years past should no longer have been found in any Penal Code. In fact the new Dutch Code has entirely abandoned it. On the other hand, I have pleasure in mentioning that the Japanese Code has borrowed from England and Germany the preparatory or conditional liberation of convicts, a scheme which is unknown in France; a privilege which might even be extended to those condemned to penal servitude for life after they have served fifteen years of their term. But, in adjusting this new institution, the compilers of the Code have committed a grave fault. They have confined the revocation of conditional freedom to cases in which the person benefited has committed some new crime or misdemeanor. Bad conduct in general, transgression of the conditions under which the privilege has been accorded, should suffice for forfeiture: it is thus that the matter is managed elsewhere.

I have, perhaps, dwelt too long upon this matter of the system of penalties. But although, from a scientific point of view, there are other chapters of Penal Law which are much more interesting, the system of penalties takes precedence of all the rest from the moment that we are concerned with the question of enquiring if the penal legislation of such and such a people is on the level of the legislations of countries which are recognized as civilized. Regarded from this point of view, the system of penalties occupies the first rank.

2.—The theory of *General Dogmas* takes the second place. The manner in which this portion of Penal Law is treated in a Code decides the scientific value of the latter; and, from this point of view, the judgment pronounced upon the Japanese Code cannot be otherwise than very favorable. I will not say that all scientific questions of this nature are therein invariably decided in the sense which recommends itself by the best motives, but it is incontestible that, almost throughout, account is taken of their bearing and the difficulties which they present. It is specially in a scientific respect that the French Penal Code sins. The Japanese compilers appear to have, conscientiously, taken notice as well of the writings of the best Criminalists as of the manner in which other Codes, for instance, the German, have treated their general portion.[14]

I have observed above that the principle of legitimate defence has not been put in its proper place: it is put, following the example of the French Code, in Book III., Chap. I., Sec. III.,

(14) I am curious to know if the Japanese compilers had any conception of our new Dutch Code, or at least of the work of the Special Commission, published in 1875. If among my readers there are any who can give me some information on this subject I shall be much obliged to them.

On legal excuses and penalties for murder and crimes of violence. In spite of that and other lapses, due no doubt to their French model, one must be struck by the accuracy of the terminology, in which impunity on account of legitimate self-defence is expressed. This right is recognized if the act has been committed "in defence of property against incendiarism, pillage, or devastation," "to repel a robbery or to *immediately recover* stolen objects." It is excluded in cases wherein the author of the murder or violence has by his own fault given occasion to the aggression of which he has been the object.—The same eulogy may be applied to other matters. In one of the Books, Book I., for example, the general causes of the exclusion and diminution of penalties are treated with equal care. Beside the constraint which the person inculpated was unable to resist (style of the French Code), Article 75 mentions expressly the case wherein, "in imminent peril arising from *force majeure* or fortuitous circumstance, the accused has acted to save his person or that of a member of his family from danger." This is the *Nothstand* of the German Code. We may observe that the question of acts committed while in a state of madness is too simply solved by the mere formula of exemption from punishment "when the accused was deprived of reason at the moment of action;" but it is very remarkable that they (the compilers) have not neglected to devote a special article to deaf-mutes, although one may find that the privilege of impunity in their favor is carried to extreme, in the declaration that they are *always* exempt from penalty, and can only be subjected to protective imprisonment *(emprisonnement de garde)*. I fancy I see here an exaggeration of the principle recognized but wisely limited in the German Code. Children below twelve years of age are exempt from penalty: between twelve and sixteen the question of their discernment must be put and categorically solved in one sense or the other.

The system that the Japanese Code has followed in case of a "concurrence of many breaches committed by the same person," might perhaps have been better chosen: it is a pure and simple system of absorption, the application of the French system of the severest penalty, except only in case of a concurrence of several contraventions, when all the penalties shall be cumulative. It appears also that the interesting subject of second offence has not been studied as it deserves, and that something better might have done than to follow a system so generally disapproved as that of the French Penal Code of 1810 in this article:—"When an individual, already condemned to a criminal penalty, commits a new crime, or one, already condemned to a criminal or correctional penalty, commits a misdemeanor, the punishment incurred is augmented by one degree." On the other hand, a great deal of care has been taken to arrange another matter which the French Code had too greatly neglected—the participation of several persons in the same offence. The distinction between authors and accomplices, the classification of instigators as intellectual co-authors, the special mention of cases in which the perpetrator has outgone the intentions of the instigator, the aggravations of penalty derived from the personal qualities of one of the perpetrators or accomplices:—all of these details are treated carefully and, mostly according to the principles generally recognized by science. "Receiving," among other things, is dealt with as a distinct offence, and not, as in the French Code, as an act of complicity. Only, I cannot approve that all kinds of provocation, without any limitation, should be treated as punishable provocation.[15] The definition of punishable attempt is borrowed from the French Code; and the manner in which this subject is dealt with offers nothing remarkable, except, perhaps, the categorical description of Article III.:—"The resolve to commit a breach, and deeds simply preparatory thereto but not followed by execution, are only punished in the cases provided for by the law."

Two other matters merit special mention.

First as concerns *Deceit (dol)*,—the criminal intention in its different shades. In this matter, the Japanese Code has taken upon itself a fairly difficult task, the draft of a general formula. This task the (our) recent Codes have declined for good reasons, preferring to insert their prescriptions relating to the intentional element in the definitions of different crimes and special delicts. The Japanese Code, on the contrary, while not neglecting this element in its special particulars, has elected to lay down a general principle:—"There is exemption from penalty when the accused has not had any intention to commit a breach."

Thus, the element of *Deceit* (*dol*) is always required (*requis*) "except in cases where the Law punishes the simple neglect of its provisions or regulations"—except, then, *delicta culposa*. Nevertheless, it is impossible to deny that this definition of "Fraud" lacks preciseness, that it runs the risk of augmenting confusion; and that at all events it leaves unsolved the three capital questions:—Is "the intention of committing a breach" an intention to transgress the law; or to perpetrate an immoral, wicked, harmful act; or simply one to commit the act, which, achieved, appears punishable by a law? Fortunately, an affirmative answer to the first of these questions is rendered impossible by the categorical end of Art. 77 itself:—"Ignorance of the Law or Regulations cannot be invoked to establish the lack of intention"; and, in so far as the other two questions are concerned, it appears to me that paragraphs 2 and 3 of the same

(15) The Code does not contain any special rules on Complicity in the case of offences by the Press. Probably, as in Germany and France, preventive or repressive measures against the Press are dealt with in Japan in a special law.

article :—" there is an exemption from penalty if the accused has been ignorant of the constitutive circumstances of the breach," and " If the accused has only been ignorant of the aggravating circumstances of the breach, he is subject to the increased penalty attached to it ":—(these paragraphs) may justify the conception of the general principle in the sense, to my view the only one admissible in theory, that I last enunciated. But whatever may be the accuracy of this interpretation, it is more than remarkable that so thorny a dogma should have been so fully detailed. The authors of the Code have proved by this fact that they have been profoundly convinced of its preponderant importance, and of the necessity to clear the scientific road for the Judges of the country. Their Law has even defined in express terms the case well known in the doctrine of Penal Law wherein the author of a homicide or corporal injury was deceived in the person of his victim.

That which has secondly appeared worthy of particular attention, is the question of the more or less *discretionary power* vested in the Judges in the matter of penalties. I will deal with this at the end of this article, after Procedure.

3.—The *Special Portion* of the Code is contained in Books II., III., and IV. It is impossible to give a satisfactory sketch of them. Useless also to mention the numerous crimes and offences against the Commonwealth and individuals, which are found in the Codes of all countries, and whereof the enumeration in the Japanese Code is truly very complete. For example we find—apart from the principal crimes and offences which I have yet to mention —the fraudulent exercise of rights by persons who have forfeited them: destruction of or damage to thoroughfares: violation of a dwelling-house: employment of deceit or force to obstruct the sale of rice or other alimentary produce of general and indispensable use, whether at public auction or in industrial or agricultural works: employment of deceit or force against masters or workmen with the object of appreciating or depreciating wages: participation in suicide by instigation or assistance rendered: abandonment of children, the aged, the sick or infirm: abuse of confidence in all its forms: embezzlement of goods belonging to the accused himself but seized by public authority: destruction of sluices or dykes, and so forth.—The definition of the various crimes and offences is generally correct, always carefully considered, and often even very well expressed. For instance, the distinction between murder, wilful homicide, and wilful blows and bruises which have occasioned a death not desired by the author, is maintained. The classification of robbery into " clandestine robberies," " robberies with open force or committed with violence," and " embezzlement of articles found," recommends itself by the accuracy of description. —The crime of forgery has been understood according to the German system: that is to say that counterfeiting or falsification is declared punishable only in so far as the forger may have made a fraudulent use of the forged or falsified instrument. (Forgery in Imperial documents is excepted). This system is exaggerated in that, contrary to the provisions of the German Code, the same combination of counterfeiting and fraudulent employment is made essential to conviction for the crime of counterfeiting coin. One might also ask, *à propos* of other articles in the same chapter, if there has been no confusion in the two systems, and if, in consequence of this confusion, the legislator has not left a gap in his law, by omitting an express punishment for the fraudulent use of an instrument by another person than the forger. In any case it is evident that the authors of the Japanese Code have not been able to triumph entirely over the great difficulties that the crime of forgery has presented, and still presents, to writers and legislators. In articles 209 and 210, for example, the Japanese Code has very well distinguished and completely described forgery in bills of exchange, notes payable to order, or any other instrument negotiable by endorsement or payable to bearer, documents, whether private, commercial or civil, relating to sale, loan, gift, exchange and other obligations; but the good idea of thus limiting forgery as a special crime to such as has been committed in title-deeds and documents, the *Urkundenfälschung* of German Law, is lost again in the generalities of French Law, when the second part of Article 210 mentions " other forgeries and falsifications of private writings not comprised in the preceding designations."

Public order and security are guaranteed by very wise penal provisions against seditious bands, rebellion, rescue of prisoners, and their escape and other delicts of this category. What, however, in regard to these provisions, should most specially attract attention, is the sufficiently severe penalties promulgated against " the fabrication, introduction into the territory, offering for sale, the mere possession, unauthorized, of arms, munitions, gunpowder or explosive substances whose use is destined for armies by land or sea," without exception. Although mere possession is only punished with a fine, yet all these Articles show the firm desire to prevent civil-war on the part of a Government which has had enough of it, and knows how to estimate the miseries that such intestine wars have inflicted upon its people.

This constant preoccupation for the well-being and pacific development of the nation is once more manifest in the first section of Crimes and Delicts against the people, entitled *On the trade in and use of Opium.* " Whoever shall make, introduce, or offer for sale, in Japan, opium intended for smoking shall be condemned to hard labor for a term": minor confinement awaits him " who shall make, introduce or offer

for sale instruments or apparatus for smoking opium." The same penalty is awarded to any one who shall provide a place for indulging in smoking and shall have derived personal profit therefrom, or anyone who shall have incited another to make use of opium. Lastly, any individual who shall smoke it shall be punished with imprisonment with hard labor for from two to three years, and anyone who shall be merely found to be the possessor or depository of opium for smoking or implements for smoking it, incurs imprisonment for from one month to one year. And, as the evil has to be combatted, before all, in its very source, the penalties against those who introduce opium will be augmented by one degree, that is to say increased to penal servitude for life and major confinement for "agents and Custom House officers who, in the exercise of their functions, shall favor the introduction" of prohibited articles. The abuse of spirituous liquors does not appear to have attained so deplorable an extension as that of opium. I find punished only for a slight offence—amenable to a small fine—those who are found in a state of drunkenness in a public place, whether lying down or addicting themselves to noisy or indecent actions. The penalty is not limited, to those who offend in the street or highway, as is the case in the new Dutch Code. Among public places are reckoned inns and bar-rooms. Even in these places the drunkards of Japan may be troubled in their sleep. I have just mentioned the Chapter "On Crimes and Delicts against the public health." Few provisions interest the foreigner so much as these do. In addition to the first Section described above, the Chapter contains five others:—Section II., "On the adulteration of public waters," that is to say of potable waters, "so as to render their use impossible or hurtful to health," punishes (this offence) with imprisonment and fine, and, in case of sickness or death resulting, with the penalties proclaimed for wilful blows and wounds followed by like results. Section IV., "on breaches of the regulations for dangerous or unhealthy industries;" the exploitation of these industries should conform to the necessary authorization and prescribed rules, under pain of fines of some magnitude; and if sickness, homicide, or personal injury ensues from the breach, the penalties applicable to homicide and corporal injury through imprudence[16] are enforced. The same system is followed in Section V. in the case of the sale of drinks or food hurtful to health, and the sale of venomous or poisonous objects without regard to the special regulations, and in Section VI. "of illegal practice of medicine."

Other legislations regard breaches in the same sense as those which are provided for in the three last sections, as police offences to which by the fact itself the scientific principles relative to homicide, blows and wounds inflicted by imprudence, are legally applicable. But as there is always something arbitrary in the distinction between Delicts *(délits)* and Contraventions *(contraventions)*, we can unreservedly justify the method of the Japanese legislator who has boldly chosen to protect the interests of the public health, and who, for the theory of deceit and fraud, has thus given good directions to the Judges.—But still more interesting than the Sections referred to is, beyond doubt, the third, dealing with "Infractions of sanitary regulations," that is to say those regulations which, in times of epidemics or epizooties are adjusted to prevent the development of the evil by communication, or forbid temporarily, the ingress of persons or merchandize from a district presumably infected with an epidemic disease (quarantine). The latter infraction is punished with simple imprisonment from one month to one year, and a fine, with augmentation in one degree for the captain of the ship infringing the prohibition or allowing it to be infringed by other persons. But the value of the other articles of the Section can only be properly appreciated in the presence of the regulations themselves, the publication of which alone can furnish us with the light required.

Beside the care of the health, I wish to mention the care of the morals, of the people. This subject is treated in Chapter VI. of Book II., "On Offences against Public Morals," and in Section XI. of the chapter dealing with offences against the person, "On Crimes and Delicts against good morals." We may add, among the Contraventions *(contraventions)*, the prohibition to pursue or protect clandestine prostitution.—Generally speaking, one is struck by the relative lightness of the penalties awarded to these diverse sins, whereof many constitute injuries to the most sacred rights, especially if we compare them with our European Codes. We can signalize, it is true, an exception to this rule—imprisonment with hard labor for from one month to six months, with a fine of from five to fifty yen, pronounced "against all persons found in flagrant delict playing games of chance:" against "those who may knowingly furnish a site for players;" and against "those who may organize a lottery to derive therefrom a personal profit." The profession of play is thus well watched, and the houses where citizens may lose their money are well guarded. But this imprisonment remains the same both in rigour and duration when it is a question of punishing the go-betweens who instigate and protect debauch in, or the corruption of, persons below sixteen years of age. Fine even, which in the penalties of the Japanese Code plays a large *rôle*, and too frequently accompanies other punishments, is lowered in the cases cited to a maximum of twenty yen. Indecent acts committed on a child less than twelve years of age are only

(16) The distinction between Deceit *(dol)* in Section II., and Fraud *(fraude)* in this one is very well preserved.

punished with imprisonment with hard labor for from one month to one year, if without violence, and for from two months to two years, if by means of violence or threats. Illicit commerce without violence with a girl less than twelve years old is only punished with minor confinement, as also in the case of rape on a woman or a girl more than twelve years old. However, unpremeditated fatal consequences, wounds, imfirmities, etc., may augment the penalty. A public outrage of modesty is punished only with a small fine; as is the case in the sale and public exposure of objects calculated to offend modesty. The definition of these various crimes and offences is, in general, sufficient and for the most part conformable to French Law. The crimes against morality which the German Code has borrowed from the old Penal Law, such as incest, etc., are not dealt with. In the same way adultery is treated according to the system of the French Code: it is only punished when it is committed by the woman; and this inequality is even augmented, for the provision of the French Code, feeble as it is, against the husband who has kept a concubine in the conjugal house, is wanting in the Code of Japan.

The detailed enumeration of breaches by functionaries, committed against the commonwealth and individuals, contains, among others, an enactment against "any Judge, any Officer of Public Ministry, or any Officer of Police, who may employ violence or ill treatment against an accused person" (threats might well have been added) "to extort avowals or declarations," refusal, without legitimate motive, to receive a denunciation or complaint, or to make a declaration to that effect, illegal detention, corruption, peculation," etc. . . .

The penalties in this Chapter appear to me generally too weak. For instance, imprisonment with hard labor for from fifteen days to three months only, except the augmentation of one degree for each period of ten days detention, is provided for an arrest without observation of the formalities prescribed by law or even for illegal detention. The penalty is never raised above a merely correctional one except when goods and not persons are concerned, principally the property of the State:—that is to say in the case of theft or embezzlement by a functionary of any sums or material of which he was in charge in virtue of his functions.

It is probably still the influence of the French Code which is visible here; and we cannot too much deplore, above all in this special portion, the uncertainty wherein the absence of a statement of motives has left us as to what has been borrowed from abroad and how much is due to purely national considerations. Among the provisions which incontestably denote a national character, I think I may count those which relate to the *Bodies of the Dead* and *Sepulture*. Any person abandoning a corpse which ought to be inhumed is punished with imprisonment with labor for from one month to one year: violation of a sepulchre, by the exposure of a corpse or a coffin, with like imprisonment for as long as two years, and if accompanied by a displacement of the remains for three years; while even attempts under this heading are punishable. But immediately in presence of these rather severe provisions, one is astonished again by the fines of two to twenty and of four to forty yen which are the only punishment hanging over *Public Insult to a Cult* in religious places, and disturbance of the religious exercises of a Creed in the same places, while the Code does not recognize any other special offences against religion.

I mention this phenomenon without judging it, and still more without condemning it; because I am of opinion that religion gains very little in being protected by penal enactments; and I am glad to assert that even the Penal Law of Japan no longer recognizes the ancient offence of blasphemy, which even in our time the Code of the German Empire punishes with a maximum imprisonment of three years. But what strikes one again here, and appears to me to be a fault in the Japanese Code, is the custom, I would say the abuse, already mentioned above, that is made of the fine both as principal and accessory punishment. The fine may be a punishment to be recommended for offences and minor misdemeanors *(contraventions et les délits inférieurs)*, or, alternatively with penalties involving loss of liberty, for certain delicts which may present themselves under very different shades. But the exaggerated accumulation of imprisonments and fines is a defective and irrational system. The inordinate substitution of fines for imprisonment may easily occasion feebleness in the supression of delicts, or often again inequalities and injustices in the application of penal provisions.[17]

In the last place I cannot refrain from mentioning again as remarkable peculiarities, Articles 360 and following, wherein, conformably to the ancient Germanic era of compositions, *Blows* and *Wounds* inflicted upon persons are punished with different penalties, according as they may have occasioned, on the one hand, the complete loss of sight, hearing or speech, that of the two hands or two feet, or of one hand and one foot, the mutilation of the sexual organs, idiocy or loss of memory; and on the other hand, the loss of an eye, an ear, a hand or a foot, a less mutilation or a less mental or corporal infirmity than those just above mentioned: then, only an illness or incapacity for work for twenty days or more: next an illness or incapacity for work for less than twenty days; and lastly a simple momentary derangement of the health, or slight bodily injuries; whereas

(17) The new Dutch Code has absolutely renounced the cumulation of imprisonment and fine. It is alone so far; but its example will be followed.

assaults which do not produce any wound or sickness, are classed, wrongfully according to a theoretical point of view, among the Contraventions.—We may here remark as a curiosity the contravention, punished with one day's detention or from ten sen to one yen fine, of those who have themselves tattooed or make a business of tattooage.[18]

II.

Criminal Procedure is at once the foundation and the crown of the edifice of Penal Law. Penal Law has been written for the guilty: its procedure is eminently for the innocent.

An imperfect Procedure spoils the best Penal Law. A sufficient Procedure may mitigate many faults. The study of a Code of Criminal Procedure which, like that of Japan, desires to adapt itself to European Legislation, has appeared to me the more interesting that our century distinguishes itself at present, and I may say for the second time, by very pronounced reformative tendencies in the domain of Criminal instruction. The first time, there was a combat between the inquisitorial system and the written and secret procedure of the ancient *régime* on the one hand, and the modern aspirations toward publicity, oral pleading, immediate judgment, and the democratic institution of trial by jury on the other. France and the countries immediately adjoining inaugurated the new era at the commencement of this century, indeed in some part towards the end of the preceding one. Many States of the Continent, the German States in the first instance, followed in the memorable year of 1848.—A second reform, which to-day is preparing itself or is already in course of slow development, tends, above all, to augment the guarantees of the accused and the rights of the defense during the preparatory instruction, in relation as well to preventive detention as to the divers methods of instruction. Germany adopted a Code of Criminal Procedure for the whole empire from the 1st of October, 1879. Austria had set the example in 1873. In Belgium the project of a new Code is submitted to a Committee of the Chamber of Deputies. Even in France large reforms are proposed in the Code of Criminal Instruction. And, in front of all the States of the Continent, England continues to occupy her isolated and remarkable place—I should say her position as guide: proud of all she has prepared or conquered herself in that large spirit which has signalized the history, so interesting, of her Criminal Procedure—England, excepting, doubtless, the absence of the institution of a public Ministry, still continues to show to other States the direction in which they may find the solution of the problems which the question of preparatory instruction presents.

(18) Perhaps the legislator had in view the habit of the women who, after their marriage, shave their eyebrows and blacken their teeth. However M. Reed, in his work before cited, informs us that this sacrifice of vanity to conjugal fidelity is not so common as of yore.

Thus, the Japanese Government had before it a very large and very varied field wherein to make its studies of Criminal Procedure and to take its choice among systems. On the other hand, the very epoch in which it was called to this work should appear specially proper to stimulate its interest and its ambition.

I frankly avow that the study of the Japanese Code of Criminal Procedure has caused me a certain disappointment. I expected more originality, larger views, less defects, borrowed it is true from the French system of criminal instruction, but already judged and condemned by experience. It is incontestable that the Code of Criminal Instruction in France has served as a model here in a much larger degree than has the Penal Code. But exactly for this reason we must regret that the authors of the Japanese Code have not found the opportunity to surpass their model. They might have borrowed, for instance, some proposals on the draft of the law to which I have just referred, tending to reform the Code of Criminal Instruction and presented by the French Government in 1879. Doing this they would have worked in the right direction. The scheme of the motives of that draft even recognizes the necessity for French legislation to organize the defence from the beginning without, however, fettering the prosecution; and the authors of the scheme proclaim that they have recognized the principle, as "an identical principle," in the three legislations from which they had to draw—those of England, Austria, and the German Empire. France, say they, made by her Code of Criminal Instruction of 1808 immense progress beyond the old extraordinary Procedure. Thus France then made the first step, but in spite of some partial repairs very useful to the system, she has never touched in her system "even the method of instruction, the rights of proceeding and defence during the period of information, the means placed at the disposal of the Judge to enable him to arrive at the discovery of the truth, and of the accused to purge himself of the accusation." What they wanted to introduce into the Code of Criminal Instruction—and the political vicissitudes of France have not allowed the Government to succeed—was; "the aid of Counsel; the facultative intervention of this Counsel in the majority of cases of *actes de l'information:* the facultative interference of the Public Ministry: the right of communication within definite limits: the right of *contre-expertise* and *contre-enquête*: the reëstablishment of the Chamber of Council suppressed in 1856 as a piece of useless machinery: the transformation, in a sense contradictory to the secret procedure followed before the Chamber, of bringing up for trial, and special depositions, having for their object the protection of the exercise of provisional liberty." All this is wanting in the French system.

I repeat then:—I have experienced a certain

disappointment in the fact that at the very moment when French criminalists and the French Government itself are convinced that their Code is behindhand as regards the systems of information and preparatory instruction, another people, a people wishing to reform its laws in a wide and loyal spirit, inaugurates this very system as a final reform.—However, I have spoken only of a certain disappointment. Far from me to wish to be unjust or to misconceive the great good qualities of Japanese Procedure. As a Dutchman, above all, I must not forget that my country in 1838 borrowed many principles and provisions from the French Code, and that the urgent reform of many portions of our Code has been awaited for a long time. Let us hope that, after the approaching introduction of our new Penal Code, we too may follow the example of Europe and that we may even surpass the models offered us by our neighbours. But let us observe at the same time that the Dutch Code of Criminal Procedure, although copied in many respects from the French Code, has always increased the guarantees of the accused during the preparatory instruction by the simple fact that it has reduced the power of the instructing Judge, and has conferred upon the Chamber of Council many of the functions which in the French system are confided to this Magistrate only, for example the issue of final orders for committal and detention, the authorization of domiciliary perquisitions, the order for discharge after the close of the instruction. And it is, specially, this excessive extension of the power of the instructing Judge that I have regretted to find in the Japanese Code.

Nevertheless, the authors of that Code have known what they were about. While admitting the French principle, they have introduced guarantees against abuse of power which the present French Criminal Instruction, that is to say that in vogue since 1856, does not recognize.

It will be sufficient to mention Art. 233:—"When the close of the instruction is announced the instructing Judge will immediately give notice to the President of the Court. In regard to unfinished business, the Judge of Instruction will make thereof every fifteen days a summary report to the said President." And, still more, Chapter IV. of Book III. (Art. 234-261), "On methods of redress against Acts of Instruction." The very first Article of this Chapter opens a means of opposing the course of the instruction and even its close, both to the public Ministry and the accused, in the following cases:—1st. Against the decision of a Judge of Instruction rejecting a declinatory plea or an exception of incompetence: 2nd. Against the service or non-service of an order contrary to the Law: 3rd. Against the concession or the illegal refusal of provisional liberty: 4th. Against any other decision constituting an abuse of power.

I voluntarily appreciate all that is good in these provisions; but the exceptions of "*illegal* refusal of provisional liberty," and the "service of an order contrary to the law," lead me to presume that the right of opposition in the accused is very much, and too much, restricted. I am led to the same conclusion when I read Art. 246 to the effect that the accused shall only have the right of opposition to the order sending him before the Courts and Tribunals in the event of abuse of power or incompetence in the Judge.

We have then occasion to regret that the new Code of Japan should not have been more inspired by the spirit of our times, that it should not contain more advanced provisions concerning the period of the preparatory instruction of a process. But we have also room to recognize that, even during this period, the Japanese Code has tried, to remedy, even in minute details, the faults which are inseparable from a system which so many legislators are reluctant to abandon, or even to ameliorate. It recognizes provisional liberty in all cases, as the French Code has done since the modificative law of the 4th of July, 1865. It specifies the cases in which there may be decreed an "order to produce" (respectively a warrant to arrest and a warrant to detain):—"if the person summoned has no fixed residence: if the Judge fears that he may take flight or cause the disappearance of the proofs existing in his possession: if he (the Judge) fears that he may put into execution attempts or criminal threats." It prescribes that "the instructing Judge must not use, to obtain from the accused the proof of his guilt, either threats or false allegations;" and that the accused may "obtain a copy of the instrument containing his own declarations:" that the instructing Judge "will summon to appear before him every person who has been designated to him as a witness by the Public Minister, by the prosecutor, or the accused." In all cases "where the persons designated to be summoned are numerous either on the side of the prosecution or on that of the defence, the Judge may confine himself to calling, in the first instance, for each side the five persons, in correctional matters, and the ten in criminal cases, who have been first suggested to him or whom he deems the best informed." Let us not forget, lastly, as an indication of the good intentions of the legislator, the little detail of Art. 152, providing that, "in every prison where accused persons are confined, a copy of the two Criminal Codes shall be held at their disposal," always without commentaries or commentators, that is to say that, according to Article 150, an advocate can only speak to his imprisoned client in the presence of an officer.

Preparatory instruction has perhaps detained us a little long, because it is to-day the field of burning questions in the matter. As to the Procedure before Jurisdictions of Judgment, and as for the means of appeal, the Code has sanctioned without reserve the great principles

of publicity, prompt process, oral pleading and appeal, which must always remain the sacred principles, conquered by the spirit of liberty and justice, which have become inseparable from civilization. Conformably to the rule generally received upon the continent of Europe, public action is directed by the Public Ministry, represented by Government Commissioners in the case of the Tribunals, and Procurators-General in the case of the Courts, whose functions are, according to an irreproachable terminology: "to search out breaches: to require, at the hands of the Judges, acts of instruction and procedure and the application of the Law to infractions: to cause to be executed the orders and decisions of Justice: to defend before Justice the interests of Society."

Regarding Criminal Procedure in general, Japanese Legislation has then an equal right to be considered and esteemed with European Legislations. At the Congress of Cologne, referred to above, the honorable and distinguished Mr. Freeland regretted, in his quality of Englishman, that he failed to find any provision for Cross-examination. But he was willing to admit that more than one Criminalist of the European Continent would not care to introduce that institution, and that even the authors of the latest French draft put it on one side with an allusion to the "captious questions which have rendered the cleverness of English lawyers so celebrated."

In sum, the Japanese Code is in no respect inferior to the French Code of Criminal Instruction in its present form. Yet more, it is superior to its model as well in some fundamental provisions, as I observed above, as in its form, order, system of provisions, and precision of terminology.

The Code is divided into six Books.

The first contains, in thirty articles, the *General Provisions:* it treats of prescription, some details of form, and, specially, the connection between public and private action. This subject should occupy one of the first places, seeing that, by the example of the French system, not only may civil action be taken conjointly with public (criminal) action, but "if public action has not yet been taken the constitution of the prosecution invests the Judge of Instruction *with the two* actions;" and so of the Criminal Courts. The second Book contains the *Judiciary Organization* in so far as it concerns penal jurisdiction. Japan has not adopted the *Jury*, and she has shown here again that she is far from being the blind imitator of Europe, and that her legislators have been desirous of taking serious account of the needs and capabilities of their nation. The Japanese Government has comprehended that it will already have accomplished a fine work when it has formed capable, scientific, independent, impartial Judges, worthy of the confidence of the country and the foreigner. It has learned that experience, specially of recent years, at least in so far as the Jury has been introduced upon the continent, has discovered many errors in the system and raised more than one opposition to it. In effect we can do without a Jury, and Holland so far has never regretted being without it.

But although the Jury is wanting, Japan, in consequence of the tripartite division of her Penal Code, has thought it well to admit the distinction of Tribunals of simple Police, Tribunal and Correctional Criminal Courts. In general, "Penal Justice of Common Law is joined to Civil Justice, and belongs to the same Courts and Tribunals." The functions of a Judge of simple Police are discharged by a Justice of the Peace.—The members of Civil Tribunals of first instance form also *Correctional* Tribunals, judging delicts according to the annual indication of the President: the same Tribunals are charged with the *preparatory instruction of delicts and crimes:* that is to say that the Minister of Justice chooses the instructing Judges from members of these tribunals; which are also Tribunals of appeal from judgments rendered in first instance by tribunals of simple police, while appeal from judgments in matter of delicts is carried before the Criminal Section of Courts of Appeal. Competence to judge crimes lies in the Criminal Courts, which ordinarily hold their sessions at intervals of three months in the rooms of the Courts of Appeal of first instance, and are composed for each session of a member of the Court of Appeal as President and of four Assessors taken according to the residence of the Court, among members of the Court of Appeal or those of the Civil Tribunal.

Next, there is a Court of Cassation, and in this Court a Criminal Chamber to decide upon appeals in cassation, upon applications in settlement of the Judges and upon demands for committal on the grounds of public surety or legitimate suspicion.[19]

Lastly, the Code recognises the High Court. The *High Court* forms, in the first place, a privileged tribunal for members of the Imperial family and Choku-nin-kwan (officers of the first, second, and third ranks) accused of crimes or delicts involving imprisonment. In the second place, it alone is competent to adjudicate on crimes against the Emperor and his family or the security of the State. It is then a Special Court sitting each time in virtue of a convocation made by Imperial decree. It is true that it is composed in advance each year by the Emperor, who selects its President, its six Assessors, and two supplementary Judges, among Senators and members of the Court of Cassation. It is also true that the ordinary Rules of Procedure are followed there; but the mere institution of a Special Court, elected annually,

(19) Compare with Articles 542 *et seq* of the French Code of Criminal Instruction.

composed in part outside the magistrature, and judging certain political infractions, may offer danger to the liberty of the citizens. The question has quite another aspect when the High Court consists, as is the case in France, of a Jury formed of social elements of a certain category ; for the variability of the personnel is a characteristic trait of a Jury. But, since the Japanese legislator was not willing to bring cases of high treason before the ordinary Criminal Courts, he might have followed the example of the German Empire, which for such cases declares its *Reichsgericht* competent. However, I am willing to believe that the Japanese High Court may offer a double guarantee of impartiality and independence by the presence of magistrates of the Court of Cassation and by the noble and elevated character of the Senate.

The third Book of the Code treats of *searching, pursuit, instruction* of infractions; and it is there above all that the Japanese Government has made proof of its administrative talent. The four Chapters are arranged in logical order: on search by the judicial Police for infractions, whether by reason of complaints or denunciations or on account of flagrant infractions: on the prosecution of breaches, whether by the public Minister or by the Prosecutor: of preparatory instruction, that is to say, summonses, seclusion, proofs, interrogatories and confrontations, verification of seizure of documentory evidence *(pièces de conviction)*, hearing witnesses, surveys *(expertises)* the instruction of flagrant infractions, provisional liberty and the closure of instructions; finally, on means of relief against acts of instruction. The arrangement of the several Articles is simple and clear: the subjects of the different sections are treated in a very complete manner.

The fourth Book is entitled *On the Judgment of Infractions*, and contains one hundred *Common Provisions*, and special rules for the judgment of contraventions, the judgment of delicts, the judgment of crimes.

The fifth Book treats of *Attributes of the Court of Cassation:* the sixth Book of the *Execution of Judgment, Rehabilitation*, and *Pardon*.

All these matters are adjusted with care, and, in general, according to the French Code, but with more than one addition rendered necessary by the absence of a Jury. That which from this latter point of view most demands attention is the system of proofs,—the most interesting chapter of the whole Criminal Procedure. The system of legal proofs, even such as it still exists in Holland, is in my opinion condemned by experience. Hence the Japanese Code has not introduced it. Its Article 146 declares that "the law does not establish any presumption of culpability from the circumstances of the case;" but that the avowal of the accused, the acts of authentication, documentary evidence, the testimony of third persons, the reports of experts, and indications of all kinds are left to the appreciation of the Judges.[20] However, on the one hand, it excludes from the witness box as sworn witnesses (without sufficient reason, according to me) the prosecutor, the parents and partners of the prosecutor and defendant, their servants or salaried employés, minors below sixteen years of age, and some other persons whose depositions have only the value of simple intelligence; and on the other hand, and a feature still more interesting and original, the Judges are obliged to *give their motives* for a judgment in condemnation, *in fact* as well as in law, making mention of all the proofs furnished.[21]

It is not here the place to examine more deeply the solution of the problem. Further, it is time to terminate my consideration of Japanese Procedure. But I cannot do so before having expressed my doubts on the subject of the tendency and the value of Article 286, prescribing that in public audience "the witnesses who may have been heard in the preparatory instruction may be again cited or summoned;" and that "the Public Minister or either of the parties may demand the reading of depositions taken in the instruction," not only if the witness has been unable to appear but also "if he has not been called." Now, the depositions of the instruction have been given under the seal of oath: they are therefore reputed true *testimony*, and may, in the terms of the law, serve as proof for the judgment of condemnation. But this instruction has been conducted in the Chamber of the Judge, with closed doors; and it appears to me that, by the above article, the principle of the publicity of pleadings and the principle of right of defence, might be seriously compromised, contrary to the spirit of the Code.

III.

A Penal Code, free from all reminiscence of a backward, aged, and crude Law, inspired with a liberal spirit, revealing a scientific sense, composed with a legislative art worthy of praise: a Code of Criminal Procedure which does not deserve, it is true, to figure in the first rank, and does not open any new horizons, but nevertheless sanctions, in general, the grand principles of modern Procedure, the irrevocable conquests of Civilization and Justice: such are the precious gifts that the Japanese Government has just made to its people: such are the works which it submits to the impartial criticism of the States of Europe and America, in order to obtain from them treatment on a footing of equality in the matter of jurisdiction: such are, in fine, the new laws that Japanese Judges are called to interpret according to the

(20) Art. 146 refers to the proofs in the preparatory instruction; but Art. 283 prescribes that "all the proofs, for and against, admitted before the Judges of Instruction, are equally valid before the Court having the jurisdiction of judgment."

(21) This is also the system followed in the draft of a Code of Criminal Procedure for the Netherlands, prepared in the years 1863 to 1857, but which never reached the stage of parliamentary debates.

principles of Science, and to apply according to the principles of Justice.

The quality of the Judges is a capital point, especially in penal proceedings, and not more in Japan than elsewhere.

Especially in penal proceedings, because the task of the Judge does not consist only in giving a decision according to fact and law, but because the Law imposes upon him also the duty of fixing, in each case, and for as much as it leaves him some liberty, the *measure of the penalty* incurred. Everyone knows that legislators differ greatly in the choice of the limits which they lay down in this respect. The extreme Left, so to speak, is occupied by the Dutch law-maker. In the three penalties of imprisonment, confinement, and fine he has restricted himself to fixing the maxima for each crime or delict, leaving invariably to the Judge the choice between the maximum and the general minimum of a day's detention, or half a florin mulct. This is because he has an almost absolute confidence in the magistracy—a confidence which he believes justified by a long experience of the system of the minima and of extenuating circumstances. Japan has very wisely chosen a system much less advanced. It is, in general, the French system, which adjusts a special maximum and minimum for each crime or delict, admitting legal excuses and extenuating circumstances; but this system is complicated by a scheme of legal gradation. Chapter III. of the Penal Code, entitled, "On the elevation and diminution of penalties," prescribes that in the divers cases in which the Law orders or permits the Tribunals to diminish or elevate penalties, they must conform to the following provisions:—Ordinary criminal and political penalties are raised or lowered in the order in which they follow each other,[22] while the lowest criminal penalties, confinement and minor detention, are replaced, as a first degree of diminution, the first by imprisonment with work, the second by simple imprisonment between two and five years. In all cases in which imprisonment and correctional fines have to be reduced or elevated by degrees, the calculation is made on the plan of *one fourth* by degree more or less than the maximum and minimun of each of these two penalties, such as they are fixed by law. Below the lowest degree (of their kind) they are replaced by Police penalties. The application of this system of gradation, and the indication of the number of degrees that the Judge should follow, are found in the special portion and in the General Chapter treating of exclusion and diminution of penalties. For example, if a crime has been committed by two several persons, the penalty is augmented by one degree; or, again, the penalty awarded for running away with a minor is diminished by one degree in regard to the person who may have received the child, that he knew to have been stolen, as a member of his family.

Thus, legal excuses may cause penalties to be lowered by one degree. A penalty is also reduced by a single degree when the culprit denounces himself to the authorities before any indication has been brought forward against him[23]; and the diminution is, further, of two degrees when, as far as it is question of an attempt upon property, the culprit has repaired all damage, whereas partial reparation, (by a half or more), fixes the reduction at one degree only. Lastly, extenuating circumstances in favor of the guilty person may be admitted in all criminal matter, Correctional or of simple Police, if even one or more legal excuses have been adduced in his favor or aggravating circumstances have been laid to his charge. When they are admitted the penalty is reduced by one degree at least and two degrees at most.

By all these indications the Law, then, shows itself the careful guide of the Judge. The Japanese law-maker appears to have understood that the future of his work, of his reputation, of his sovereignty, or at least of his territorial jurisdiction, is in the hand of his Judges. Of what kind will be their jurisprudence? Will it offer the guarantees necessary to render Foreign States willing to confide to it the interests of their subjects? Experience alone can make answer; and that must be made known.

Publicity of audience will not suffice any more than partial publicity of the papers. It is necessary to know the causes and judgments in full to be able to form a serious estimate of their value. I am pleased to hope that the Japanese Government will encourage the publication of criminal judgments in order to inspire full confidence in its magistracy. That institution must make its way slowly and surely.

The education of a magistracy worthy of respect is not the work of a day. At Cologne, last year, Sir Travers Twiss emitted the idea of commencing by the formation of *Territorial Courts*, composed of foreigners and natives, on the plan, in some measure, of the Mixed Courts of Egypt. Mr. Stuart Lane has declared that in his opinion (which he did not give in his diplomatic capacity) the Japanese Government would voluntarily accept any measure which might lead to the desired object.—The history of later years has proved that Japan does not reject the lights or the aid of the foreigner. A number of distinguished Europeans have filled honorable missions in Japan. I think that it is lawful to hope that never will misplaced pride and exclusiveness prevent Japan from having recourse to the foreigner if the need makes itself felt; but, on the other hand, Mixed Tribunals, whatever be their organization and the limits of their jurisdiction, have incon-

(22) See supra, p. 5, 6.

(23) Except in cases of Assassination or Murder.

testable disadvantages. We have seen this by experience earned in Egypt.

In order that the jurisprudence of Japanese Tribunals should have the confidence of the nation, it would perhaps be better to confide all the jurisdiction to national magistrates. But in order to ensure the confidence of foreigners we must have a learned, independent, impartial, magistracy. We must have, further, the certitude that the spirit of the Government and the spirit of the people will maintain and continue to develop those great principles of justice and humanity, to which the new penal legislation has in many respects given eloquent expression.

History authorizes us to believe in the future: we shall believe in it yet more from the moment when the Japanese Government shall deem itself able, without peril, to open the whole country to foreign commerce.

1883.

REPORT

ON THE

DRAFTS OF THE CRIMINAL CODES FOR THE EMPIRE OF JAPAN,

BY

MR. DESJARDINS,

Professor to the Legal Faculty at Paris.

Extract from the *Bulletin de la Société de Législation comparée*, No. IV., April, 1880.

(TRANSLATED FROM THE ORIGINAL FRENCH, AND REPRINTED FROM THE "JAPAN WEEKLY MAIL" OF THE 21ST OF JULY, 1883).

REPORT ON THE DRAFTS OF CRIMINAL CODES FOR THE EMPIRE OF JAPAN.

Translated from the French of Mr. Desjardins, Professor to the Faculty of Law at Paris. Extract from the *Bulletin de la Société de Législation comparée*, No. IV., April, 1880. Tokio, 1883.

The *Société de Législation Comparée* has received a *Draft of a Penal Code for the Empire of Japan, presented to the Senate by the Minister of Justice in the eighth month of the tenth year of Meiji* (August, 1877); and a *Draft of a Code of Criminal Procedure, presented to the Senate by the Minister of Justice in the ninth month of the twelfth year of Meiji* (September, 1879).

These two drafts are offered to us in the name of the Commission which has prepared them, and whose President, the Minister of Justice in Japan, belongs to our Society, as does another member, a French savant, Mr. G. Boissonade.

A great change will be accomplished in the Empire of Japan when the new Criminal Law is applied there. No legislation will approach more closely to our own than that which will then enter into operation: none was farther from it than that which will cease to exist there.

While the new Penal Code recognizes and protects absolute liberty of conscience, the ancient law proscribed Christianity, foreign creeds in general, and any reformation in Buddhism itself, and treated as a crime the practice, even in secret, of a forbidden religion. The state recognized many cults; but it behoved any one changing from one to another to be authorized to do so. This remarkable application of the system of previous authorization disappears before the new Public Law.

While some subjects of accusation are suppressed because there is no longer any reason for their survival, others are absent from the present draft (although the deeds which used to occasion them might recur) because the legislator appears to be inspired with the ideas which rule the private morals of Western Europe. It is less timorous than those which preceded it: and so it shows itself less implacable. The ancient Japanese law had infinite dread of the temptations to which women might be exposed by the feelings or complacence of servants. The servant who secretly pandered to the intrigues of his master's daughter was simply banished from the house; and if he gave her a love-letter he was deported; but he who allowed himself to be employed in a love intrigue by the wife of his master, or incited her to it: he who made that woman a declaration of love in writing, sought to seduce her, or, in order to attempt her honor, secreted himself in her chamber, was decapitated. In case he succeeded in seducing her, he was taken on horse-back to the execution ground, and his head was exposed on a stake. Other provisions showed the legislator as severe in repression as foreseeing in the detail of breaches of morality. In abandoning them, he bears witness to his confidence in the nation, and allows us to believe in a grand amelioration of private morals.

It was not only matters regarding the conduct of woman which occasioned so much severity towards servants. The law had constantly in view the security of masters. The pain of death, more or less surcharged with aggravations, was incurred both by those who killed them wilfully and those who wounded them, and even by those who threw a sword or a piece of wood at them. Special protection was extended even to the relatives of masters and former masters. This was nothing but the application of a general idea, the respect due to certain social superiorities, created as much by the political institutions of the country as by the relations of ordinary life. We will only cite one example, to wit, the formal precept that any one who killed the proprietor of his house should be decapitated.

Another feature of the law which is about to be replaced appears to be great concern for detail. It is probable that the new law is much more simple, because each one of its provisions is drafted in terms much more general. Nothing appears more to tend to limit the power of a Judge than a law which dictates to him beforehand the decision to give in each particular case. But, on the other hand, he had sometimes a singular discretion allowed him. The penalty varied in certain cases according as the author or the victim was a bad person *(méchant)* or not.

The ancient Japanese law contained many

rules which had for their object to insure, by means of penal sanctions, the conduct of the public services, especially the administration of justice and the execution of sentences. It was feared, not only that functionaries might commit infractions themselves, but further that they might protect persons who did so, or cause the traces to disappear. It was also dreaded that indifference or fear might prevent the people from aiding the authorities in their search for crimes and criminals. A police agent who retained money, jewels, or other objects found by him in his diurnal or nocturnal round, was tied on horseback, thus carried to the place of execution, and beheaded. If his find was of small value he incurred only the scourge or the brand. He who found, when on a beat submitted to his surveillance, exposed infants or sick persons unable to continue their journey, and took them into another beat, was beheaded. He who played a game of chance in his room or in the guard-house was transported to an island. Confinement *(les arrêts)*, censure, and fine, awaited the mayors, heads of districts, and even bonzes, who lent themselves to conceal, or did not endeavor to verify, an assassination, the traces which it left, him who committed it. Any person concealing another against whom a warrant had been issued was liable to decapitation.

The system of penalties was not the same for people of the lower class and those of high condition. The pain of death was very frequently pronounced. On the former it was inflicted in many different fashions: decapitation by the sword, crucifixion, the stake, beheadal by the saw; and each one of these penalties might receive aggravations destined to render it more infamous: for instance some culprits were taken to their doom in their shirts, tied on horseback wearing a placard which proclaimed their crime and name: their heads were exposed: their bodies cut to pieces. There were horrible details in these various executions. As for Japanese of distinction, they opened their bodies or had their heads cut off: this latter was the graver penalty. Voluntary disembowelment, which no person condemned to ever shirked, sometimes took place in the temples of Buddha, among the priests and in the fashion of a ceremony. It is certain that penalties of this nature must have been very frequent, inasmuch as the art of opening one's body according to rule was taught, and every noblemen was bound to keep in his wardrobe the costume which he would wear on the day that he had to perform it. Further, it was not only a means of executing the fatal sentence: it was also the exercise of a privilege to anticipate judgment, avoiding infamy for oneself and one's descendants. A person might thus efface the gravest crime; and the sentiment of honor impelled the employment of the same means of expiating the most trifling fault. The legislator has only tried to render rarer the suicide that was honored by custom. We understand why its practice should be contemplated in the present draft. For the lowest classes were reserved the bamboo and manacles. Among the infamous penalties applicable to the women belonging to them a singular contrast is to be signalised. Side by side with seclusion in a convent was relegation to a place of ill fame. Deportation was common, but of most frequent employment in the case of persons of inferior condition. Imprisonment, on the other hand, was proper to the higher classes.

This information, borrowed from an article published in the *Echo du Japon* of October 23, 1876[1] shows us what distance the Japanese had to cover in order to come to us and borrow the principles of a penal legislation.

The two drafts are of peculiar interest to Frenchmen. Our codes have served as a model for them; but the compilers have proposed to themselves to better the works that they imitate. In the legislation thus prepared for Japan we, too, may find the means of perfecting our own.

It was desirable to make between the two Codes a better division of matter. Thus, in the Penal Code are found the rules laid down on the subject of Crimes and Delicts committed in foreign countries as well as those which relate to the prescription of penalties. The order of each Code has been changed. It doubtless appeared little conformable to the exigencies of science and logic, and the compilers have sought to arrange the material in a more rational manner, following in that the criminalist rather than the legislator. The codification is more complete: it has been possible to bring into the body of the work some laws which, with us, have been passed subsequent to the Code, as for example those for the Press, Elections, and the sale of unwholesome food. The rules regarding judiciary organization and competence are included in the Code of Criminal Procedure. Provisions in which our experience has discovered gaps have been rendered more complete: those whose obscurity has caused controversy have been cleared up: the legislator formally recognizes some principles which our jurisprudence has gathered from tradition or painfully extracts from text-books, for example the maxim of *una via electa*. It is not the spirit of the legislation which is changed: it is to the method and arrangement that the compilers have principally devoted their efforts, which are often felicitous.

The Penal Code, like our own, is divided into four books: Book I., *General Provisions:* Book II., *Crimes and Delicts against the Commonwealth:* Book III., *Crimes and Delicts against private persons:* Book IV., *Contraventions.* The first Book unites the matters which form in the French Code the *Preliminary Provisions* and the *First Book* or *Penalties in Criminal and Correctional matter*

(1) The article in the *Echo du Japon* is refuted in many points by Mr. E. Labbé, professor, in a work upon the Japanese drafts.

and their effects. The arrangement of this book gives a good idea of the new work. After having treated of *The application of Penal Law in general* in Chapter I., *and Penalties* in Chapter II., the authors occupy themselves successively with *the gradual Elevation and Diminution of Penalties* (Chap. III.): with *Causes which exclude or diminish Penalties* (Chap. IV.): with *Causes which aggravate Penalties* (Chap. V.): with *Concurrent Causes of aggravation and diminution of Penalties* (Chap. VI.): with *Several Concurrent Infractions committed by the same person* (Chap. VII.): with *Concurrence of several persons in the same Infraction* (Chap. VIII.); and, lastly, with *Unconsummated Infraction* (Chap. IX.). The compilers do not leave, in their subsequent books, any provision of a general character, just as they do not insert in the Code of Procedure any rule which has a properly penal character. While forming a systematic whole, they obtain a double result. Not only do they foresee, in the spirit of him who has to study or apply the law, all the uncertainty of the extent of such or such prescription, but they, further, put into their work more logic and harmony.

In Chapter I., *On the application of Penal Law in general*, we will remark Sections 5 and 6 of Article 5, which subordinate prosecution before Japanese tribunals of Crimes or Delicts committed abroad to these two conditions: "If the infraction has not been amnestied by the foreign Government: if prosecution is not already extinct by prescription according to the law of the foreign country." Article 6 applies a principle admitted in France, but contested by distinguished jurisconsults, to wit, that the extradition of a subject cannot be accorded by his government. Article 7 submits to the Penal Law foreigners who commit infractions within Japanese territory, but a note informs us, that the notification which will promulgate the new Penal Code will have the following provision:— "The period at which the present Code shall be made applicable to foreigners will be decided later on by treaties and diplomatic conventions."

The general system of penalties, treated in Chapter II, also faithfully reproduces ours:— "The pain of death is carried out by hanging. Execution takes place within a prison, in the presence of persons designated by the general regulation for the execution of penalties." The same measure, it will be seen, is proposed simultaneously to the Parliament of France and the Senate of Japan. Differing from our legislation, the Draft admits temporary deportation, for from sixteen to twenty years (Art. 26). Reclusion, involving hard labor, is divided into *major* and *minor* (Art. 28): no other difference but that of time is here indicated. So of detention (Art. 29). After two years of major detention or one of minor detention convicts may be allowed to work out the balance of their sentences in an island set apart for deportation (Art. 30). There is not, any more than with us, any forced work for those condemned to deportation and detention. Article 31 distinguishes between two kinds of correctional imprisonment, namely, with compulsory work, and simple imprisonment. The draft provides a rule which is found in many foreign legislations—the conversion of unpaid fines into imprisonment, which must only be simple imprisonment.

Among accessory penalties the draft does not discern, at least by name, civic degradation in purely correctional criminal matters—the interdiction of certain civic rights, civil and family. It simply employs the expression, *Privation of civic rights*. Article 39 indicates, under three heads, the incapacities that this privation implies: the list is even longer than that in our Article 34: the compilers retain incapacity to give testimony before justice, otherwise than as simple intelligence, and they add inability "to be a syndic, or administrator of goods in bankruptcy, of a society, corporation, or whatsoever other collective industry." Perpetual privation of all the rights enumerated in Article 39 is attached to every criminal penalty (Art. 40). Sentence to correctional imprisonment involves, *per se*, disability to fulfil public functions and employments (Art. 41): all the other rights enumerated, except (? including) those of bearing, whether nobiliary or honorific titles or national decorations, are suspended during the term of imprisonment (Art. 42); and this suspension may be prolonged by the tribunals, "according to the nature and circumstances of the infraction," in whole or in part, "during a time equal to the term of imprisonment, such as it is fixed by law." One sees that, while the Draft provides civil degradation in all but its name, that which creates with ourselves the subject of interdiction from certain civic rights, civil and family, is very differently arranged.

The Draft provides, like our Code, for special confiscation, but with a two-fold difference. On the one hand Article 55 determines with precision three categories of objects which are subject to it:—"(1) manufactured goods, produced or possessed contrary to law, no matter to whom they belong: (2) the material which has served for the infraction: (3) objects directly obtained or acquired by means of the infraction, when, in these two last cases, the property belongs to the convict or when the owner cannot be found." On the other hand, this is an imperative provision and not merely an implied one like that of our Article 11: the judges must pronounce special confiscation in virtue of this text whenever an object is found to belong to any one of the three categories; and it is only on the hypothesis of an object coming outside of them that a special text would be necessary. Solidarity is only pronounced for costs and civil sentences; and, further, the judges can suppress or restrict

it in regard to one or several convicts or persons civilly responsible (Art. 59).

Preventive detention (term of imprisonment served previous to sentence) is allowed for all penalties privatory of liberty and temporary: " (1) Day for day or month for month in simple imprisonment: (2) for three quarters of its duration in imprisonment with toil: (3) for half its duration in temporary criminal penalties" (Art. 63).

One Section, forming Articles 65 to 67, is devoted to preparatory liberation[2] that institution which several European countries congratulate themselves upon having adopted, but is only availed of with ourselves in the case of young prisoners, and which penitentiary science commends as one of the fittest to enable the prisoner to get back into society without danger to himself or to it.

Article 68 enumerates ten methods of extinction of sentences. Article 70 lays down for prescription seven different terms, namely:—from thirty years for the pain of death to one year for detention *(arrêts)* and simple police fine.

In Chapter III., *On the Gradual Elevation and Diminution of Penalties*, the compilers give general rules for the calculation by which they shall be regulated every time when there is a question of increasing or reducing penalties. They content themselves with saying that such and such shall be augmented or diminished by one or several degrees, without for instance indicating the figure of the fine or the term of imprisonment which shall result from such augmentation or diminution.

In Chapter IV., *On Causes which exclude or diminish Penalties*, special note will be taken of that part which concerns the young. The compilers distinguish four periods: up to twelve years there can be no infraction, but the Court has power to order correctional imprisonment *(emprisonnement de garde)* up to sixteen years of age, as a maximum: from twelve to sixteen years of age the minor will be acquitted with the same proviso or condemned according as he has acted with or without discernment: from sixteen to twenty the ordinary penalty is reduced by one or two degrees: only after twenty years of age does complete responsibility begin (Arts. 91 and 93). The deaf and dumb are always exempt from penalty; the utmost that they can be subject to is a limited imprisonment for five years. (Art. 94). The spontaneous avowal of a prisoner who gives himself up, "before any trace or revelation has been produced against him," is a valid excuse, and involves reduction of the penalty by one degree (Art. 96); and, in the case of Crimes and Delicts against property, voluntary restitution or reparation, with confession added, implies a fresh reduction, by two degrees if it is complete —by one when it is at least only half effected (Art. 97). Extenuating circumstances may be admitted in all cases: they may be combined with excuses as with aggravating circumstances, but the effect is limited to a reduction of penalty by one or two degrees (Arts. 99, 100).

Chapter V., *On causes which aggravate penalties*, opens with Receiving. The point of departure is the penalty. In the case of a criminal penalty, (1) a second crime carries the temporary penalty to the maximum, and augments by one quarter the criminal penalty already carried to the maximum by virtue of the fact itself; (2) a delict is punished by one degree. In the case of correctional imprisonment, the penalty incurred for a new delict is augmented by one degree (Arts. 101 and 102). Article 105 deals separately with the consequences of every new infraction committed during the period of the first penalty, a subject at present occupying the attention of the French legislator, *à propos* of crimes which have been committed in our penitentiaries.

According to Article 111., if there be in the same affair general and special causes, whether of aggravation or extenuation, the special causes are first considered:—" If there exist, at one and the same time, causes of aggravation and causes of extenuation, a balance shall be taken as of one degree of aggravation against one degree of extenuation, first observing the similarity of causes, if that be possible."

The Penal Code, in Chapter VII. of the first part, deals with *Several Concurrent Infractions committed by the same person*. Two systems are presented. The majority of the Commission proposes, for Crimes and Delicts, simply to impose the highest penalty, considering the longest the highest, imprisonment severer than fine, and on the principle that, in case of differences of maxima and minima, "sentence cannot descend below the lowest minimum and can attain the highest maximum" (Art. 112). According to the minority, distinction should be made: in certain cases only the severest penalties should be pronounced; but, in others, there is room either for cumulation or augmentation of the severest penalty. Art. 114, equally subscribed to by both parties of the Commission, settles the hypothesis of successive prosecutions, so embarassing to our jurisconsults:—"The smallest penalties are cancelled by fusion. If they are punishments privatory of liberty, the time which has been actually undergone is counted day by day with the severest penalty. In the case of fines which have been actually paid they are restored, or counted as part of the new fine if the latter is the higher of the two."

Chapter VIII. defines co-authors (Sec. I.) and accomplices (Sec. II.). To the first are assimilated such as, "by gifts, promises, threats, abuse of authority, or whatever other culpable means, provoke or determine another to commit a crime

(2) *Gallicè*, "Liberation Préparatoire," answering apparently to the English "Ticket-of-leave" system.—*Translator.*

or delict," and such as provoke to crimes or delicts by word or writing when provocation has been followed by an act: in any case neither the first mentioned nor the others, when they take no part in the accomplishment, "are reckoned as forming plurality of authors, in cases where such involves an aggravation of the penalty" (Art. 120). When the author, "under the influence of provocation," commits a crime or delict different from that which the provoker had in view, the latter only answers for the one he has instigated if it be the less grave, and for that which has been actually committed in the other case. The same distinction is applicable if the difference between the act provoked and the act accomplished bears upon the methods of execution (Art. 121). Among accomplices are included "those who, subsequently to the accomplishment of a crime or delict have aided the culprit in acts tending to insure its effects" (Arts. 122, 123), a provision which is would be criticized by the greater number of criminalists. Ordinary accomplices are punished with the penalty attaching to the infraction committed, but with reduction of degree. Whether there be question of co-authors or of accomplices, causes of aggravation are only deemed effective in regard to those who have known or foreseen them; and those which relate to the personal qualities of one person are only prejudicial to himself; but to him they are always prejudicial, barring a reduction of one degree, in the event of there being but one accomplice.

There is no general provision analogous to our Article 61. We must refer to the special portion to find (Art. 146) "punished as accomplices of crimes committed according to the preceding article those who, knowing the object and character of the said acts, may, voluntarily, before or after the fact, have provided the guilty with shelter for meeting or escape," with absolvatory excuse in the case of near relations or connections.

The compilers, in Chapter IX. *On Unconsummated Infraction*, carefully establish a distinction between divers degrees, (1) resolution formed individually or collectively to commit an infraction, (2) and preliminary actions, which are not punished outside the cases provided for by law: (3) an "attempt at crime manifested by beginning of execution which has only been suspended by a circumstance independent of the will of the author is visited with the penalty of the same crime achieved, with the reduction of two or three degrees:" (4) any crime aborted by a circumstance independant of the will of the author is punished as the crime itself with a reduction of one or two degrees: (5) the evil-doer who voluntarily stops in the course of accomplishment, or who voluntarily fails after having achieved all the acts necessary to accomplishment, is punished only for the wrong actually inflicted: (6) a crime, impossible by reason of the nature of the act or the means employed, is not punished, "if the act and the means employed could only produce an injury less than that which the author proposed to himself, it is only punished to the extent of the wrong actually produced." Attempted delict and delict aborted are only punished in virtue of a formal text. Attempt at contravention and contravention aborted are never punished.

With Book II., *On Crimes or Delicts against the Commonwealth*, we enter upon the special portion of the Penal law. From the very first provision we find a dissidence between the two parties of the Commission. They agree on the principle that every Crime or Delict committed against the persons of the Emperor, the Empress, the Empress Mother, and the Prince Imperial, are to be punished as though they were committed by descendants against ancestors, but the minority proposes certain provisions whose object is to strengthen or to assure repression (Art. 131). A wise foresight suggested to the compilers, who are acquainted with the history of parliamentary countries, Article 137, punishing "with major detention those who, united in bands, and employing force against a Deliberative Assembly of political or administrative standing, or against a Juridical Body being part of Central or Departmental Power, have prevented it from uniting or deliberating, or constrained it to deliberate contrary to its will."

The compilers settle, in Articles 144 and 145, the question of crimes against Common Law involved with political crimes, by applying the penalties of Common Law. The pain of death is, as with ourselves, suppressed in purely political matters.

The minority of the Commission proposes (Art. 154 *bis*, Chap. 3 *bis*) provisions relative to Crimes and Delicts against the Law of Nations. Chapter 3 *bis* contains two Sections—one treating of *Piracy*, the other of *Trade in Slaves and the Sale of Free Men*.

Chapter VI., *On Crimes and Delicts against the Public Health*, contains a Section against which we have nought to say, *On the Commerce in and use of Opium*. To give an idea of the dread that opium inspires in Japan, we will only quote Article 268:—"Whosoever may have manufactured, imported, or exposed for sale opium intended for smoking, shall be condemned to Penal Servitude for Life."

On the other hand, we find traces of our own legislation in Chapter VII., *On Delicts against Public Morals and the Respect due to Cults*, and in Chapter VIII., *On Delicts against Freedom of Trade and Industrial or Agricultural Labor*. It is not only jurisconsults: it is economists who have drafted this latter Chapter. These Chapters comprise the provision, that our Penal Code classes in its Book III., *On Crimes and Delicts against Private Persons*:—for instance those which concern unauthorized lotteries and obstacles thrown in the way of free purchase at auctions.

Section II. of Chapter XI., entitled *On Crimes*

and Delicts of Functionaries against the Person, is remarkable for the respect it testifies for individual liberty, security, and dignity. Let us quote only Article 316, according to which "any Judge, Officer of the Public Ministry or Police, who may use, or cause to be used, upon a suspected person, violence or ill treatment in order to extort from him avowals or declarations, shall be punished by imprisonment with labor for from six months to three years, and with a fine of from twenty to one hundred *yen*, without prejudice to severer penalties, if occasion requires, for wilful blows or lesions." Rights are protected as carefully as persons, as proved in Article 318, which punishes refusal and delay to decide, on the part of any Judges, civil or administrative, criminal or military.

Book III., *On Crimes and Delicts against Private Individuals*, contains incriminations almost all of which are borrowed from our legislation, but notice has been taken of the criticisms which have been passed upon this latter. For example, Waylaying, useless to say accompanied by premeditation, because it implies that necessarily, disappears in the definition of Assassination (Art. 327). Poisoning is no more than wilful homicide resulting from the administration of substances of a deadly nature (Art. 329). "Certain gaps are filled up, or certain additions are made." Murder is still qualified as *Assassination*, even in the absence of premeditation, "when it has been preceded or accompanied by mutilation, physical torture, or other acts of barbarity" (Art. 328). Counsel maliciously given to commit an act which causes death is punished, according to circumstances, as assassination, poisoning, or murder (Art. 332); and that which entails lesions and bodily and mental infirmities is punished as would be such lesions wilfully inflicted (Art. 342). The case in which, desiring to kill or wound some one person, a person kills or wounds another, is specially provided for: the crime is treated as wilful (Arts. 333 and 339).

Legal excuses and causes of justification (same Chapter, Sec. III.) are the same as with us. Excuse resulting from provocation is formally refused "to him who, by his own fault, has exposed himself to provocation" (Arts. 343 and 342). The generous notion which sees a cause of excuse "in the transports of anger caused by blows or grave injury inflicted upon another in the presence of the accused" is endorsed by Article 344. Excuse is allowed to both parties when it is not possible to determine who has been the provoking party (Art. 345). It is extended in a case wherein "murder or violence has been the sole means either to prevent a robbery without violence from the person or to recover immediately the objects stolen" (Art. 349).

Article 352, while reducing legitimate defence to an extenuating excuse when the measure has been exceeded, in admitting none but this excuse when the injury has been inflicted after the danger has disappeared, gives legislative sanction to decisions which with us are only furnished by maxims or jurisprudence.

The very force of circumstances did not allow the compilers to leave homicide by imprudence unpunished; but Article 353, which foresees it, is not easy of reconciliation with Article 89, according to which, "there is no infraction so long as the accused had no intention to commit it or to do harm in committing it, except in cases wherein the Law punishes simple disregard of its provisions and its rules." Not always can general principles be propounded without danger. The same remark might be made, for instance, *à propos* of Article 369, assimilating to homicide and wounds inflicted through imprudence any threat made in jest resulting in mental disease or death, Articles 454 and 400, —*à propos* also of the first of which punishes incendiarism, the second, inundation, caused not only by disregard of the regulations but by imprudence.

Complicity in suicide is the subject of a special Section (Art. 356 to 358).

Complaint of the injured party is necessary for the exercise of Public Action in case of threats (Art. 367), abduction, or kidnapping children or minors (Art. 383), offences to modesty with or without violence, and rape (Art. 390).

The gravity of the penalty, in case of threats, varies with the injury produced upon the physical or moral health of the person to whom the menaces have been addressed (Art. 368).

Another Section represses, together with the abandonment of children, that of the aged, the sick, and the infirm (Arts. 374 to 379).

In Section XI., *On Crimes and Delicts against Good Morals*, actions contrary to modesty are divided into two classes, according as the victim is more or less than twelve years old (Art. 386). In Article 389, it is the minority of the Commision that proposes to admit the aggravating circumstances allowed in our Article 333: it is permissible to ask how dissidence could occur on this point. Article 392 (2) "punishes as a co-author him who by gifts, promises, threats or otherwise, has procured constitutive agency—"incited to debauch."

In Section XII., *On Crimes and Delicts against the reputation of others*, we will mention Article 395, which punishes a lying plaint or denunciation made in writing or verbally, Article 402, which guards the principle of professional secrecy, in making, of cases applicable, a more complete enumeration than that in our Article 378.

Chapter II. of Book II., *On Crimes and Delicts against Property*, deals with *clandestine thefts or those committed without violence* (Sec. I.), *open robbery, or such as is committed with violence* (Sec. II.); and expressly provides, in Section III., for punishment for *embezzlement of objects or treasure found*. Among the other

Sections we must take note of Section VIII., *On Inundations*, and Section IX., *On collisions, and sunk or foundered vessels*, which shows the Japanese legislator completing the work of the French legislator.

The inspiration of Roman Law is not perhaps foreign to Article 412, aggravating the penalty in case of a robbery committed "during fire, inundation, shipwreck, tumult, or any other calamity."

Leaving on one side many points upon which we could indicate differences from our own legislation, we will conclude this study on the draft of the Penal Code, by signalizing the arrangement of Contraventions in six classes (Book IV.).

The draft of the Code of Criminal Procedure contains, first *General Provisions*, and then five Books:—Book I., *On the Organization and Competence of Repressive Tribunals:* Book II., *On Search after, Prosecution and Instruction of Infractions:* Book III., *On Judgment of Infractions:* Book IV., *On the Attributes of the Court of Cassation:* Book V., *On the Execution of Judgments, Rehabilitation and Pardon.*

In the *General Provisions* the rule that *the criminal's status is civil*, is not only laid down, but is explained with precision by Article I:—"If the two actions are pending simultaneously, whether before the repressive jurisdiction or before two different jurisdictions, the civil suit cannot be decided before the criminal one, at the risk of the nullity of the two decisions if, a civil sentence having the precedence, a penal condemnation follows."

Among the methods of extinction of prosecution, Article 8 (4) mentions "the abolition of penalty inflicted in virtue of a law passed after an infraction." Does this paragraph mean that the infraction will thereafter remain unpunished, even in case the new law should substitute another penalty for the one that it abolishes? The authors most probably supposed that an infraction ceases to be punishable in virtue of a new law; but this time they have not expressed themselves with sufficient clearness.

Prescription of proceedure is confined to six months when it is question of contravention (Art. 40). If, in principle, civil action is prescribed within the same delay as criminal action, it falls, under the application of Civil Law when that has occasioned a judgment (Art. 11), and generally, "notwithstanding the prescription of criminal action, and so long as the term of ordinary civil prescription has not expired, the aggrieved party preserves the right of action for damages and for restitution, conformably to the rules of Civil Law, but without power to attribute to the alleged fault the character of an infraction." (Art. 12). Article 13 expressly includes in the term the day on which the act was committed. Articles 14 to 16 regulate in detail the cases and bearings of the interval.

Damages are awarded the accused, not only "in case of nonsuit or acquittal," if there has been bad faith or grave fault on the part of the accuser, plaintiff, or prosecutor, but even in case of condemnation and acquittal "if the fault of the plaintiff or accuser has consisted in serious exaggeration of the acts incriminated (Art. 18).

Articles 21 to 23 contain general rules as to the manner of calculating such adjournments as are allowed by the Code: Articles 24 to 26, on the manner in which notices have to be given: Articles 27 and 28 on all documents drawn up by a public officer.

The first Book treats *of the Organization and Competence of Repressive Tribunals.* The rules which our legislators have laid down, in our codes and special laws, are here co-ordinated: it is in the *Common Provisions* and not by themselves in a category of infractions, as in our *Code of Criminal Instruction*, Article 227, that connexity, approximately as it were, is defined as it is with us.

Articles 41 to 44 deal with competence *ratione loci:* cognizance of an infraction is attributed to that one of the tribunals within whose circumscription the infraction has been committed; and the place of arrest is only taken into consideration. (1) if there is any uncertainty as to where the infraction was committed: (2) if the same infraction was perpetrated at the same time or successively within the range of many tribunals: (3) if many distinct infractions have been committed in different jurisdictions:—"In a case where several tribunals are competent, if there has been no reason for preliminary arrest, or if it could not be effected, the tribunal which first commenced instruction or procedure is alone competent" (Art. 44).

A privileged Court is provided for Justices of the Peace, Judges, officers of the Public Ministries, and Secretaries. The derogations from the ordinary rules of procedure which this renders necessary are laid down in Articles 49 to 54.

Articles 56 to 60 deal with competence. The rules are the same as those we follow; but they are here expounded in such a manner as to form a separate theory, to understand which is easy, and whose application is general.

As with us, the Justice of the Peace discharges the functions of simple Police Magistrate; but the Deputies *(suppléants)* of a Justice of the Peace may sit on the bench with a consultative voice [Art. 62 (2)]. In case of a Commissioner of Police being prevented from attending, the functions of the Public Prosecutor will be fulfilled by his Deputy, if there be one, or failing that by a Deputy of the Justice of the Peace [Art. 63 (3)].

Correctional Tribunals are the subject of Chapter II., Article 66 (2) charges them with preliminary instruction in case of Delicts and

Crimes :—"The functions of the correctional Judge are conferred for one year, in each tribunal of *arrondissement*, on one or several titular Judges, by the President with the advice of the tribunal and Government Commissioner Assembled in Council. They cannot be conferred on the same Judge for two consecutive years, nor be given to the same Judge a third time before all the Judges of the Tribunal have been called to discharge the said functions during one year at least." It is a rotation surrounded by guarantees; and the same system applies to the Court of Appeal sitting on correctional matters (Arts. 75 and 76). In the Correctional Tribunal, as in simple Police cases, the right to be present, with consultative voice, is given to Deputy Judges [Art. 69 (2)].

Enumeration of officers of judiciary police is found in Article 72. Some correspond with the Government Commissary. Such are the Prefect and the Vice-Prefect of Police in Tokiyo, Prefects and Vice-Prefects in the Departments: the second are Commissaries-General, Commissaries of Police, Sub-Prefects, Judges of the Peace, Mayors, *in the districts where officers of one of the grades above described have not their residence* (Art. 72). It is not a question here of the Judge of Instruction as in our Article 9. The officers who have just been named, if they have deputies, are replaced by them in case of hindrance. The right of conferring rogatory commissions and the necessity of filling them are defined with the greatest minuteness by Article 73. Lastly, Article 78 permits the Procurator-General to "make by himself or one of his substitutes, in the whole extent of the circumscription of the Court of Appeal, the acts of judiciary police and prosecution, which are attributed to the Government Commissionary in the correctional Tribunals."

Criminal Tribunals are composed, like our Assize Courts, of a President, two Assessors, and Jurors to the number of ten only. The rules according to which the President and Assessors are designated remind one of the French system even in its complications, with modifications destined to give more safe-guards to the defence. The composition of the jury depends upon a double drawing by lot, the first giving a Session list, the second a judgment list (Arts. 86, 89 to 91, 454 to 460). But there is a special law for the Jury which prescribes the mode of drawing up the annual list. The functions of the Public Minister "are filled by the Procurator General or a substitute designated by him. The Procurator General may also designate for these functions that prosecuting official who took part in the preliminary instruction. Failing special appointment, or in case of inability to act on the part of him who has been designated, the said functions shall be fulfilled by the Government Commissary in the civil tribunal where the session is held or by substitutes nominated by him."

Book I. closes with the organization of a High Court, doubly competent by reason of the quality of certain persons and the nature of certain affairs.

Book II. treats of the *Inquiry into, Prosecution and Instruction of Infractions.*

We will specially remark, in what concerns complaints and denunciations, the double competence of the Judge of Instruction and the Government Commissary. If they are preferred before the latter he may, in case of urgency, and *if the deed appears to involve imprisonment* or a graver penalty, preside at the first verifications and at the interrogation of the accused and witnesses, after which he will send the documents to the competent Judge of Instruction, with his advice in his requests, if there is occasion. The officers of the Judicial Police may also, in case of urgency, make the verifications and interrogatories, and must send the documents to the Government Commissary under whom they serve" (Art. 107). These provisions relate to the case of urgency, which is not provided for with us. What is borrowed from us is what is special to flagrant infractions (Art. 114 *et seq.*). The difficulties to which Article 106 of our Code of Criminal Instruction has given rise are removed by Article 116 of the Japanese Code, thus conceived :—"Any Agent of the public force, any functionary having the right to command or require its services, or being in the exercise of his duty, who shall surprise a person in an act of crime or flagrant delict of a kind involving imprisonment or a graver penalty, must arrest the said person, or cause him to by arrested, without warrant or order for arrest."

The methodic spirit of the whole work is found in Article 123, in which the Government Commissary is shown the various actions that he may have to take when he has terminated his inquiries. The attributes of the Judge of Instruction are detailed with precision in Articles 29 *et seq.* The legislator takes care to describe to him explicitly his part and that of the Government Commissary, by fixing the cases in which they act separately or in concert.

One section (Arts. 133—155) is devoted to warrants. This is not a point in which the compilers of the Draft have made any concessions to the criticisms directed against our Code. We find our four warrants—to appear, to bring, hold, and to arrest;[3] but the cases wherein they must be issued, the conditions to which they are subordinated, the effects which they produce, are determined in a more precise manner. For example, "after ten days from the execution of a *mandat de dépôt*, the Judge of Instruction must either change it into a *mandat d'arrêt* or set the accused provisionally at liberty with or without bail." Solitary confinement (for accused persons) is established. The conditions of its infliction are carefully explained in a special section (Arts.

(3) *Comparution, d'Amener, de Dépôt, et d'Arrêt.*

156 to 159); the power of the Judge of Instruction is only limited by the necessity of making a report, giving his reasons to the President of the Tribunal in case of its renewal, and by that of interrogating the accused at least twice in each period of ten days after which such solitary confinement, if it is not renewed, expires.

In our Code of Criminal Instruction there are only scattered provisions for the proofs to be furnished before the different jurisdictions; rules of detail laid down in regard to divers categories of infractions; and one has often some difficulty to decide whether what is said of one category should be extended to another. The compilers of the Draft have thought fit to devote one Section to proofs generally (Arts. 163 *et seq.*): their system is that of conscience proofs (Art. 160).

They employ, generally, such methods of investigation as are in use with us, without enfeebling them, and sometimes even strengthening them, but leaving out all that is insidious and liable to abuse:—"The Government Commissary may always assist at the interrogation of the accused, and ask the Judge such questions as it may appear to himself advantageous to put" (Art. 164). "The Judge may urge the accused to avow his guilt, to designate his co-authors and accomplices, and to make any such other declaration as he may think is in accordance with the truth; but he must not, in order to obtain confessions, use either threats or intimidation, either illusory promises or false allegations" (Art. 165). The accused may obtain a copy of his statements.

The right of delegation is expressly extended to acts for which it is practised in fact, but contested in law, with ourselves. "In matters of small gravity, the Judge of Instruction may charge the Justice of the Peace, even within his circumscription, with visits to places and domiciliary investigations such as are above described" (Art. 183). Article 184 bestows on the Judge of Instruction in most ample terms the right of intercepting letters, despatches, etc., "addressed to the accused or other persons concerned in the instruction, or forwarded by them."

A remarkable provision is that which limits the number of witnesses:—"If the number of persons designated to be summoned (before the Judge of Instruction) exceed five in correctional, and ten in criminal, matters, whether on the side of the prosecution or the defence, the Judge may confine himself to summoning, first, the five or ten persons who have been first indicated to him or whom he may deem to be the best informed, with discretion to summon, afterward, a greater number, if he thinks it necessary for the discovery of the truth" [Art. 185 (2)].

"If the witness refuses to take oath, he will be condemned, without appeal, to a fine of from five to twenty yen at the discretion of the Public Prosecutor" (Art. 196). Article 197 enumerates those who are not required to take oath; and Article 191 those who are not allowed to do so. Article 201 punishes a refusal to explain in the same way as failure to appear, with a reservation in favor of professional secrecy.

The matter of expert testimony is treated in a special paragraph. We observe that, according to Article 209 (2), "women and foreigners may be appointed experts."

Instruction of flagrant Infractions (Art. 208 *et seq.*) is regulated on the same principle as with us; but if the Government Commissary is informed earlier than the Judge of Instruction, he may, after having informed the latter and without waiting for him, proceed in whole or in part with such proceedings as are in the function of that magistrate (Art. 220), the same rights only devolve, in a less degree, upon subordinate officers of the Judiciary Police (Arts. 222 and 223).

The Judge of Instruction may always order an accused person to be set, provisionally, at liberty, "with the understanding that he must comply with every order to appear during the course of the instruction and to receive judgment if necessary," subject to asking for the conclusions of the Government Commissary, and subject also to the protest of the latter, when the accused is under a warrant of arrest (Art. 230):—"Liberation may always be subordinate to a bail guaranteeing the appearance of the accused, the amount to be fixed by order of the Judge according such liberty." (Art. 232). We may remark here the exclusive employment of bail for the appearance of the accused (cf. Art. 234).

In Section VI. the Code treats of the *Closure of the Instruction*. After having determined the functions and obligations, both of the Judge of Instruction and the Government Commissary during the term of instruction, in such a way that the former retains all his independence, and the latter is never left ignorant of the process, the Draft indicates the five different orders that may be given, thus, order of incompetence, of *non lieu*, sending before a simple Police Court, sending before a Correctional Tribunal, and lastly, sending before the Criminal Court in state of accusation (the machinery of the Chamber of Accusation having been suppressed), the consequences of these orders, notably as regards individual liberty, and the question of contumacy.

Chapter IV. is devoted to *Methods of Relief from Acts of Instruction*. The draft takes notice, first of all, of a class of acts including, (1) decisions rejecting a declinatory or an exception of incompetence, (2) service of an order *de dépôt* or *d'arret* contrary to law, (3) grant or refusal of provisional freedom when the Judge has not complied with the forms and conditions prescribed by law on this subject, (4) any other decision which may constitute an abuse of power. Protest is open to the accused as well as to the Public Prosecutor (Art. 258). It is the Tribunal which decides the point, in

Council Chamber with three Judges at least (Art. 260), save an appeal which can only be received together with an appeal against the order for closing. A second class includes these Orders for Closing. They may be, in all cases, protested against by the Public Ministry (Art. 274), by the prosecutor in certain defined cases (Art. 275), and by the accused (Art. 276). Here also it is the province of the Council Chamber to decide. The orders of the Council Chamber, deciding on a protest, may themselves be appealed from in which case the higher Court has very extensive powers (Arts. 282, 287, *et seq.*). It will be seen that the accused is treated far more liberally in the Japanese Draft than by the French Code; and that the institution of the Council Chamber is invested with attributes whose object is to offer guarantees without fettering procedure.

Articles 261 to 263 treat of the exception of "conflicting jurisdiction" which may be taken by the Public Ministry, the accused, or the prosecutor, when two Judges of Instruction, or one Judge of Instruction and a Tribunal may simultaneously have taken up the same affair or kindred cases. The order of the Judge of Instruction can be protested against: the conflict may be stopped by the Council Chamber, when it has not been stayed by the Judge of Instruction himself; and it is only in case the exception has been carried to these two degrees that there is need to refer to the ruling of the Judges.

Articles 264 to 273 contain very perfect provisions anent the causes for challenge of Judges of Instruction, Clerks of Court, and all officers of Courts of first Instance or of Appeal deciding upon recourse against an act of instruction. The same system, with the modifications which may be necessary in procedure, is applicable to Jurisdictions of Judgment. Thus, one of the gaps in our own criminal legislation, forcing us to apply the provisions of the *Code of Civil Procedure*, is filled. As for the Government Commissary, he only can challenge himself: he cannot be challenged.

Book III. treats of *Judgment on Infractions*. Faithful in all respects to an excellent system, this Draft includes (in Articles 301 to 375) the provisions common to the three orders of jurisdiction. There are many more than with us.

In the very first Article in the Book, Article 301, we find a precaution taken against a species of arbitrariness:—"The roll of the cases to be heard, for each day of audience shall be arranged according to the order of their inscription in the registry of the Tribunal concerned.—Notwithstanding, the President of the Court may modify this order, whether of his own motion, to shorten preventive detentions, or on the demand of the parties, for weighty and justifiable causes."

The rights of the defence are recognized on the same principles as with us. The reservations which the violence of the accused in the famous trials of 1830 to 1835 forced the legislator to introduce, will be found reproduced in Article 305. The necessity of suspending the debates when the accused is unable to attend by illness and when he is in a condition of mental alienation, is here recognized by formal text, that of Article 306.

The attributes of the Presidents are nearly the same in all the jurisdictions. There is no discretionary power proper to a Court of Criminal Justice.

Acquittal is distinguished from "placing beyond prosecution" (*mise hors de poursuite*) which is pronounced in the following cases:—"(1) if the deed incriminated is not punishable by the law; (2) if prescription from prosecution has been acquired; (3) if the infraction has already been the subject of a judgment: (4) if the deed has been amnestied: (5) if the accused finds himself possessed of an absolvatory excuse allowed by the law; but always provided that the exception has not been already rejected during the instruction by the Court of Cassation" (Art. 366).

Article 357, holding that "by the judgment which shall decide on a prosecution, the Tribunal shall decide at the same time on the civil suit brought by the party who feels himself aggrieved, and upon the suit in indemnity by the accused," makes no distinction according as the process terminates in condemnation, acquittal, or "placing beyond prosecution." It effaces that distinction in our law which reserves for the Court of Assizes the faculty of deciding upon damages in all cases.

Among other provisions favourable to the defence we will mention Article 363:—"The convict may be relieved from failure resultant upon the expiration of the adjournments fixed for his various remedies, if he proves that there has been for him or for his representative any hindrance resulting from *force majeure* or fortuitous circumstance, without fault on his part or that of his representative. In this case recourse must be formulated within the term of legal delay beginning with the removal of the hindrance, by reason of a petition stating the motives with proofs in support." The Public Minister has, it is true, the same right; but he will very rarely have to make use of it. The same spirit of liberal justice is apparent in Article 368, where it is said, without distinction between the jurisdictions, that, in case of contradictory sentences the President will apprise the condemned of the privilege which he enjoys to obtain, at his own expense, copy of or extract from the judgment, of such rights to appeal, or powers in cassation, as may belong to him; and of the period within which he can apply this remedy.

Many points of detail are foreseen by a legislator who has appeared late enough to profit by

knowledge whereof experience has proved the importance, to appropriate whatever useful rules practice has spontaneously admitted, and to adopt and complete them. We cite Article 369, relating to the rectification of errors or omissions in minutes of judgments, and Articles 374 and following relating to the docket of cases kept by Clerks of Courts.

The Common Provisions are followed by three Chapters, containing Special Provisions for the three kinds of infractions. Each of these Chapters commences with an Article (376, 406, 431) wherein the legislator enumerates, with his habitual care, the various methods of settling competent jurisdiction: he does not wish his interpreters to be obliged to assemble scattered provisions, but presents a complete picture.

The method of interrogating the prisoner both before the Criminal Court [Art. 465 (11)] and the other two Tribunals (Art. 383 and 414) is prescribed. The only difference is in what concerns the effect of a confession. Before the two inferior jurisdictions, "if there has been full avowal on the part of the prisoner there will be no occasion for the production of other proofs except in case the prosecuting party requires it, or the Court orders it of its own accord" (Art. 384). If there is only an imperfect confession other proofs are produced (Art. 385]. On the other hand "a confession, however full, by the accused does not absolve the Court" (criminal) "and the Jury from proceeding to the full investigation of the affair." [Art. 465 (3)].

The procedure which ought to be followed in cases of default by the accused in simple Correctional Police cases, offers some peculiarities worthy of remark. The processes-verbal or reports are read; but the witnesses for the prosecution are not heard unless the pursuing party desires it. The witnesses of the prosecutor are heard in support of his demand: the rebutting witnesses present are heard, if the Public Minister, the Prosecutor, or the parties civilly responsible, require it, or if the other side's witnesses have been heard. The Judge may also hear any witnesses of his own accord (Art. 389).

Right to appeal from a simple Police sentence is accorded not only to the prisoner condemned to *arrêts* (the mildest form of detention) but to the Public Ministry if the Court has not ordered the *arrêts* in conformity with its conclusions. In this case the right of the prosecution is strengthened by the Draft. Appeal is open, with us, "when fines, restitutions, and other civil reparations exceed the sum of five francs in addition to the costs" (Art. 172, *Code d'instr. crim.*). The Draft leaves the fines on one side and adopts another principle. "Appeal will be allowed on the part of the prosecutor, the prisoner, and the persons civilly responsible respectively, on the subject of damages, whenever the claim exceeds the scope of the civil competence of the Justice of the Peace in last resort." Lastly, appeal is receivable, "on the part of all the parties to the cause, for incompetence, abuse of power, and any violation of the penal law or of the form prescribed, on pain (if they do not succeed) of nullifying their interests" (Art. 396). An appeal, primarily limited to certain heads of judgment, may always, even at the hearing, be extended to others; and, on the other hand, the respondent can always formulate a counter appeal (Art. 401). Finally, Article 403, which Article 415 declares applicable in correctional matters, determines the effects of the appeal according to the principles followed by our legislation, although they are not expressed in our Code.

In Chapter III., *On sentence for Crimes*, we will remark Article 452, including the address that the President should make to teach Jurors their rights and their duties. It is a veritable treatise, very complete, on the matter; and the Draft takes the sage precaution of distributing printed exemplars among those who have heard it. True, it is only pronounced once, in the solemn audience where the Session list is definitely arranged. The Jurors take oath for the whole term of the Session at this sitting: they have to affix their seals to the written form of oath (Art. 453): here we have a detail peculiar to Japan.

We will mention Article 475, which deals with the summing up of the President, to whom it recommends the greatest impartiality: Article 484, holding that "in the matter of prescription, the jury will only be interrogated if there is doubt or dispute as to the period at which the crime was committed;" Article 486, determining the question, that may be asked as the result of the debates, independently of the questions relating to the indictment, as it is framed in the order or the warrant for sending: Article 508 which provides for the case in which the Court, after the verdict has been given, can send the Jury back to its Deliberative Chamber. According to Article 415, when the accused is declared not guilty, it is the Court which pronounces his acquittal. The Chapter terminates with rules of Procedure for contumacy. We will mention Article 523, a paragraph of which permits the Court "to recognize, in favor of the accused, legal excuses or the existence of extenuating circumstances."

Book IV. treats of *the Attributes of the Court of Cassation;* and the first Chapter, *Of Appeal in Cassation.* Article 533 enumerates the causes which may open the way to Cassation: they are fifteen in number; but Article 537 indicates the cases in which the different parties may avail themselves of one or other of them. Further, an extraordinary appeal may be formed by the Procurator-General with the Court of Cassation either of his own accord or by order of the Minister of Justice "from judgments or orders carrying a condemnation not authorized by law, in regard to the facts re-

cognized by the judgment, and which neither the person sentenced nor the Public Prosecutor with the Tribunal would have assailed within the prescribed delay" (Art. 540): against "judgments or orders, be they of acquittal, 'beyond the reach of prosecution;' or of lighter sentence than that which the law ordains, (1) if there has been corruption of Judges or Jurors; (2) if violence or grievous threats have been employed toward those persons; (3) if there have been false declarations in rebuttal, obtained by the same means, whether on the part of witnesses, experts, and interpreters, or of the public officers charged with the verifications;" on condition that "the accused has been condemned as author, instigator, or accomplice in the said acts of corruption, violence and threats" (Art. 541): finally when there is contrariety in the provisions of the same judgment or of two different judgments" (Art. 542). This appeal may be formulated at any period against decisions susceptible of protest or appeal, thus differing from the ordinary appeal. In the case foreseen by Article 540, the Court itself, after having annulled the decision, applies the law: this is not so in the cases foreseen by Article 541, except if the sentence passed is too light in view of the facts established. Article 543 regulates, with distinctions, the deduction of penalties privatory of liberty, already undergone on a sentence cancelled, from the new penalty inflicted.

Cases of the non-receivability of appeal are limitatively determined, and are the subject of special and expeditious procedure (Arts. 552 and 553).

We have seen that the Court of Cassation decides without return, at least in certain cases, upon extraordinary appeal of the Procurator General. It should act in the same manner when it breaks a decision for false application of the law to deeds of which the accused has been found guilty (Art. 561): when a Court of Assize, after the Jury has returned a verdict of "guilty," has wrongly admitted an exception against the lawfulness of the prosecution, and pronounced the acquittal of the accused; but if the same method of cassation is proposed against the decision of a Correctional or simple Police Tribunal, the Court will quash the sentence and send back the affair to another Tribunal of the same order (Art. 562). This idea of the Draft is clear, and commends itself without difficulty, whenever there is only question of applying the law: a sending back is then useless, the Court of Cassation pronounces. In simple and correctional Police cases, an exception admitted against the propriety of prosecution has prevented searching examination: the case must be sent elsewhere. In a Criminal Court the Jury has pronounced for guilt, the examination of the facts is complete: and the question of receivability is the only one to decide.

The decisions of the Court of Cassation have, from the first cassation, the force of *chose jugée* in points of law. "Further, the Tribunal to the Court to which a cause is sent back cannot, without being guilty of a denial of Justice, declare itself incompetent for the cause on which the Court of Cassation has decided, nor admit any exception against the receivability of a prosecution which may have been rejected by the said Court" (Art. 570).

Article 573 prohibits protest against the decrees of the Court of Cassation, but establishes certain guarantees to insure that the legal explanations shall reach the unsuccessful petitioner. On the other hand civil petition is permitted (Art. 577).

A remarkable provision is that of Article 575:—"In all cases where cassation of a judgment or decree may occur, in virtue of Articles 532, 540, 541, and 542, if the Court recognizes that there has been grave fault or serious negligence on the part of one or several known members of the Tribunal or Court, it can pronounce against them, at the request of its Procurator General, by warning, reprimand, or censure, according to the gravity of the case, without prejudice to more serious penalties, if occasion requires in the case of Article 541.—The Court has the same right, when, adjournments or term of appeal having expired and cassation having become impossible, the Procurator General submits to it documents or judgments, smirched with the same vice." One sees that the Court of Cassation is invested with immense power over all the magistracy.

In Chapter II., *On Appeal in Revision*, we must signalize Article 582, which adds two cases to the three provided for by the French law: (1) If after a sentence for a Crime or Delict committed in a place and at a time determined it is afterwards proved by an authentic document, drafted at the same time and in another place, that the prisoner was present at the making of that document; and if, further, this place is so far from the site of the infraction that the prisoner could not in any probability have been the author of the said infraction: (2) if one or several of the Judges or Jurors who have taken part in the judgment have been condemned for corruption on the occasion of the affair in which sentence was passed, save the case in which such corruption may have been exercised by the prisoner himself. Let us congratulate ourselves that a similar provision did not appear necessary to the French legislator.

Finally, Book V. treats of *The Execution of Judgment, Rehabilitation and Pardon.* Although we have noticed in the scheme rather what differs from our legislation than what resembles it, we will signalize Article 628, which places penitentiary establishments under the control of the Minister of the Interior. Such is with ourselves the actual condition of matters; and, as is known, it has been briskly attacked of late years. Article 629 adopts

legislatively our useful institution of a judiciary cash-box. On the other hand Article 625 is a proposal very proper to the Code. It confers right to petition for pardon or commutation of sentence on the Judges and Jurors who participated in the conviction, within three days, on the Government Commissary of the jurisdiction that condemned, and on the Governor of the penitentiary establishment where the penalty is being worked out, at any time. It also permits the Minister of Justice to recommend whenever he pleases, the prisoner for pardon to the Emperor; and it keeps perfect silence as to the convict himself.

1883.

PENAL CODE

AND

CODE OF CRIMINAL PROCEDURE IN JAPAN,

BY

DR. S. MAYER,

VIENNA.

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PENAL CODE AND CODE OF CRIMINAL PROCEDURE IN JAPAN.

TRANSLATED FROM THE GERMAN OF PROFESSOR DR. S. MAYER, VIENNA.

No apology will be needed for the following attempt at presenting a sketch of the above code of laws which came into force on the first of January of this year in the Empire of Japan. Berner, whose assistance was given in the preparation of the Penal Code[1] — a fact which in should command respect for the Laws—declares[2] that the draught, upon which his opinion itself was asked, showed great progress. "The penal system is rationally constructed, the definitions of crimes are given in simple clear outlines, the penalties attached are proportionate and humane, and the experience of the cultured world as well as the progress of European science has been regarded throughout." With this view in his mind Berner gives the Japanese regulations regarding police supervision as well as the instructions of the Japanese Penal Code regarding confiscation, and conditional discharge, in the French translation of the draught. These codes now lie before me in their Japanese-official French translation;[3] but I have reproduced them in a (German) translation so as to show their exact connection and give their most essential regulations, because I thought this the only way to give a faithful picture of the important reforms which have been accomplished in the field of penal legislation in this remarkable land which strides with gigantic steps along the path of civilization.[4] Of course we are now dealing with a presentation, and not with a criticism of these laws. The peculiar circumstances of Japan and her people are too far removed from us to allow us to judge in every particular as to the adaptability of this or that regulation. The fact that Japan has undertaken so notable a reform at all is remarkable enough, and from the standpoint of international intercourse should be hailed with joy. On this accouut it seems proper to direct the attention of foreign nations to these results of penal legislation. Considered from the higher and more general standpoint of human progress, one would not be justified in undertaking either a criticism or a comparative treatment: we must take these laws as a whole and compare them with other codes as a whole. What Montesquieu well says with regard to the comparison of French and English legislation[5] is equally applicable here: "Ainsi pour juger lesquelles de ces lois sont les plus conformes à la raison, il ne faut pas comparer chacune de ces lois a chacune, il faut les prendre toutes ensemble, et les comparer toutes ensemble."

Nevertheless it may be well, in a few introductory remarks, to give the characteristics of these two Codes. We draw a distinction between the Penal Code and the Code of Criminal Procedure. The first seems to excel the second in importance and essential value, for the criminal procedure, much more than the Penal Code, confines itself to the inherited rut of French Legislation. As regards the justiciary and a great part of the regulations for criminal procedure, we find on the one hand a close connection with the *Code d'instruction criminelle*, and on the other, frequently successful attempts to break through the numerous hard and unnatural formalities of French legislation; or at least to lighten them and bring them into harmony with later procedure, and thus to realize, in well-digested regulations, at least some of those great principles which constitute the legal acquisitions of late decades.

The principle of evidence lies at the basis of the code: no sort of judicial presumption to the disadvantage of the accused is allowed to result

(1) Berner speaks of this in his essay "Japan" in *Gerichtssaal* Vol. XXXIII. p. 383: "with two intelligent and cultivated Japanese, the Secretary of the Japanese Senate Mr. Murata, and the attaché of the Japanese Embassy Mr. Gurzi (?) Tanahashi, I have had weekly consultations of several hours duration, for three whole months with respect to a Japanese Penal Code, the draught of which was laid before me in a French translation on the 4th of January, 1881; the results of which will now be in the the hands of the Japanese Senate."

(2) Gerichtssaal, *loc. cit.*

(3) Code pénal, promulgué par le Décret No. 36, le 7 mois de la 13 année de Meiji (13th year of the present Emperor of Japan) Tokio Imprimerie Impériale 3 mois, 14 année de Meiji. Code de procedure criminelle promulgué par le Décret No. 37, le 7 mois de la 13 année de Meiji, Tokio, Imprimerie Impériale 3 mois 14 année de Meiji.

(4) See Berner in Gerichtssaal, on the report of the Japanese Government presented at the Penitentiary Congress in Stockholm, which the president Dr. Wines declared to be the most elaborate, the most important and the most perfect. In this report it is seen that Japan has advanced with zeal and discretion in the way of penitentiary reform. With regard to the reform of penal legislation then under way, Dr. Wines expresses himself "that it would place the penal administration in harmony with the spirit and culture of modern days."

(5) Esprit des lois, tome IV. p. 241.

from preliminary examinations; on the other hand the preliminary examination is allowed to exert too great an influence, at least formally, on the actual trial, since documents of considerable range may be presented and read. This is seen especially in those regulations which allow in the trial the reading of the declarations of witnesses in the preliminary examination. Otherwise the procedure abides strictly by the principles of oral and direct evidence. Although not always with perfect success, the law endeavours to maintain the principle of complaint, and to realize it in a far greater degree than the formal concession which the French *Code d'instruction criminelle* makes to the same principle. The procureur-general and the examining justice are placed together as mutually perfectly independent persons; the procureur-general presents his charges, the examining justice decides regarding them. The commencement and continuation of procedure depend essentially on the determination of the complainant; on the other hand, in order to bring out the truth, a considerable amount of official activity is expected of the Court, which at times is binding on the complainant.—The principle of publicity is strictly maintained. A judge of the realm must decide in all criminal cases.—One very pleasant feature is the favour which the law extends to the defence, the liberty of which is preserved and protected in every possible way, and in court procedure with extraordinary rigor, indeed a number of these regulations might well be recommended for incorporation into the latest legislation (of Europe). The code recognizes also the right of compensation in case of a legal cessation of procedure or of acquittal; it is true this is only as regards the complainant, informer, or prosecutor, but at the same time Art. 16, of the Criminal Procedure is a modest beginning in the application of a principle, which is estimable and justifiable from a theoretical standpoint, but the practicability of which can be shown only by experience. The humane instructions regarding the treatment of the accused in the preliminary examination, so entirely in harmony with the regulations which aim at securing a substantial defence, are worthy of special notice; on the other hand as a correlative may be mentioned the rigor of those regulations which fix the punishment of a magistrate who may exceed his duty (excès de pouvoir). The system of legal remedy which rests somewhat on the same principle is rather complicated: there seems to be here almost too much of the good thing for the realization of the largest justice. The legislators of this code were not willing to reject the regulations of the French *Code d'instruction*, which amid many defects has been shown by the experience of more than seven decades, to possess undoubted advantages, but on the other hand they wished to go beyond the narrow limits of the French system, and thus without precedent, particularly in the matter of authoritative overcoming of informalities by means of the court of cassation, while preserving the apparently cramping forms of French justice, they have admitted a freedom for the criminal procedure of Japan which many a later Code might well envy.

Altogether, we have before us in this Criminal Procedure a work which, without dealing particularly with its various excellencies and defects, places upon Japanese Courts of Justice a task which is as grand as it is responsible. For if the Criminal Procedure is to be in a position to accomplish the object of the same, namely to restore the true order of justice by punishing the really guilty, there is need of a great expenditure of the intellectual and material resources of this energetic land to produce cultivated judges and courts which, in their composite character, can claim perfect confidence, so as to accustom the Japanese people to the course of a well ordered administration of penal justice, to facilitate the almost sudden transition out of the undeveloped, uncodified conditions of justice which had previously prevailed, and to adjust the law itself to the needs of the land, which for the time being it seems to exceed. But for those nations who have come into more active intercourse with Japan there cannot but arise a pleasure in the consciousness of the fact that the prosecution and decision of punishable offences are regulated according to European models, and that thereby a still stronger and securer foundation has been laid for the cordial relations which already exist between us and that Empire now developing in so remarkable a manner.

As a matter of course the Criminal Procedure can show whether it is successful or not only in connection with the penal Code.

In this connection the whole matter has a more favorable aspect. Although it is true that, in consequence of copying too closely the model of the French *Code d'instruction criminelle*, the Criminal Procedure of Japan does not always deserve unlimited praise, on the other hand we cannot withhold from the Penal Code the unreserved admiration which has already been expressed by an authority so generally acknowledged in the field of penal legislation.[6] We have here to do with a really remarkable phenomenon, and although from the nature of the case the Code is not an independent one, and no new ideas of penal justice are evolved, it is nevertheless in many respects original legislation. We may appreciate its value by considering first of all the difficulties to be overcome, in a land where penal legislation was still in its childhood, in adjusting a Penal Code which should on the one hand correspond with modern views, and on the other still remain in harmony with the peculiar traditions of the country. All the penal justice of Japan hitherto had been unwritten

(6) Berner, *Gerichtssaal* loc. cit.

custom. This Code is well thought out, systematically arranged, and the penal system harmoniously and rationally elaborated. That the results of German legislation could not have been ignored is evident from the influence which no less a man than Berner had on the formation of the Code. The regard shown to the latest Italian penal legislation is seen in the carrying out of the rather problematical system of grades in penalties, in which too much is left to the discretion of the judge. The influence of the latest penal laws of the Netherlands and of Hungary are also in many places very apparent. The Penal Code, certainly in fundamentals, but in a far less degree than in the Criminal Procedure, follows the model of the French *Code Pénal* and the improved edition of the same in the Belgian Revision of 1867; still it is, as may be easily seen, more in a technical than in a material sense, for even where penalties in exact conformity with the *Code Pénal* are denounced, great care has been shown in the fixing of the gravity of the offence, so as to replace the somewhat elastic indefiniteness of the French Code with clear and definite ideas of punishable acts, and to diminish the severity of a penalty where, in spite of a general effort after lenient penal sentences, the severity of the French law cannot be denied, particularly in the matter of accessory penalties and those involving loss of rank which reflect no great honour on the (French) law.

The Death Penalty is pronounced in comparatively rare cases.

Penal offences, which, in the French laws and European laws modelled after the French, are stamped as crimes, are here declared to be delicts, in order to avoid the severity of criminal penalties, and, in case of delicts, in order to lessen as far as possible penalties affecting personal liberty, considerable use is made of fines, such as is seen in scarcely any other code. There are very few delicts where, besides imprisonment (cumulative), there is not also a fine levied; perhaps there is in this case a little too much of a good thing, as punishable offences often entail both imprisonment *and* a fine, for which, from their nature and motive, the latter would seem to be hardly an appropriate penalty. The comparatively very high *minima* of penalties, are to be explained only by their connection with the system of gradation of penalties, already noticed, the numerous causes for exemption and the so-called *excuses légales* arranged according to the French model. The code borrows from German penal law the system of delicts which must be prosecuted by private complainants and enlarges the same. This is seen particularly in the gravest crimes against morality, as rape, violation, the prosecution of which depends on the complaint of the injured party. The legislator thought this respect for the injured party and his family to be necessary.

The law aims at furthering the culture-development of the Japanese people, and at removing by means of penal regulations many of those barriers which separate the habits and customs of Orientals from Europeans. The Draco-like severe penal regulations with regard to the production and use of opium must be noticed,—(Penal Servitude for a term and confinement: mere smoking of opium entails a penalty of at least 2 years of major imprisonment) which would indeed be inexplicable to us, if we did not seek the reason in the justifiable intention of the legislator to exclude by exemplary severity an enervating vice, alike destructive of mind and body, so that the devastations caused elsewhere by the use of opium, dulling as it does all noble ambition, and laming the energy of the people, might be hindered in time.[7] The penalties against tatooing, although comparatively lenient are founded upon the recognition of the fact that every step towards European civilization should be furthered by removing capricious marks of distinction, so far as national peculiarities and the demands of piety do not hinder the action of the legislator. That the legislator had full regard for the sentiments of the people, is proved by the numerous delicts incorporated in the penal code which entail a penalty directly upon all who insult these sentiments of piety, whether towards the living to whom devotion is due, or towards the dead, and even their tombstones and monuments. The Section: "*Crimes against the bodies of the dead and their tombstones*," gives expression to this, and no less earnest and unmistakable is that other section: "*Crimes and delicts of descendants against their ancestors*," which bears witness to the beautiful relationship existing in Japan between parents and children. Japanese family life is well known to be quite exemplary, and the mutual relation of the married has greatly improved since Japan emancipated herself from the exclusiveness of Oriental states. Japanese women, though they do not enjoy the liberty of European women, have no longer a life of exclusion; they are rather united to their husbands in true domestic relationship, and the husband makes every effort to show full respect to his wife—whence it comes that the children owe the mother no less respect than the father.—Altogether it is evident, in the section relative to Crimes against morality (which, as we are informed, very rarely occur); in the severe penalties against adultery, which also does not often occur (one-sided as the French *Code*); in the penalty for bigamy[8] &c., &c., that the legislator on the one hand, in many of

(7) Opium Smoking has not yet been introduced into Japan. The fear however is reasonable that the vice may be imported from China. The Japanese on the whole are a temperate people.

(8) According to Japanese custom bigamy was already punishable; the legislator only expresses the voice of the people in his penal regulations.

his penal regulations, starts with the idea of furthering the purity of family life and the morality of the home, and that he aims on the other hand, to educate and incite the people to nobler moral ideas above and beyond the narrow domestic circle.

The beneficial influence of this penal code will not be confined to Japanese territory and the present stage of actual culture-development. Intercourse with other nations will be advanced by the numerous and admirable penal regulations which directly aim at giving security and stability to this intercourse. There are severe penalties against counterfeiting coins and bank-notes, even foreign ones, falsification of trade marks, counterfeiting weights, measures, forging commercial paper, bills of exchange, checks to order, and other instruments circulated by endorsation. The principal delicts are given in the outline which follows. A matter of considerable importance to commercial intercourse with Japan is provided for, though in a somewhat imperfect manner, in the penal regulations of articles 388 and 389, regarding bankruptcy. We may also mention the severe penalties against swindling, Art. 390 et. seq., on account of failure to execute contracts &c. As working in the same direction we may mention the admirable tolerance towards alien creeds which is seen in manifold penal regulations; (particularly in penalties against disturbance of sacred service &c., Cap. VI., Art. 258 et seq.) These regulations stand in splendid contrast to the spirit of intolerance in which so many oriental nations are sunk; this facilitates intercourse with the people and residence in the country.

A list of beneficial regulations which would do honour to any European penal code, guard the sanitary interests of the people, aim at removing anything prejudicial to health, and before all things preservation of the purity of that indispensible article, potable water. All disturbances which result in sanitary dangers are treated as crimes. Of course climatic conditions demand special legal protection against the introduction of diseases, &c.

The awakening political life of the people finds expression also in the severe penalties against falsification at elections, &c. (Cap. VI., Art. 288 et seq.). The intention to educate the people gives rise also to the severe penalties against gamblers. The care for defenceless and helpless persons is repeatedly made evident in this penal code. The legislator extends his protection first of all to the aged and the young, and then also to the helpless prisoner, whose ill-treatment the Criminal Procedure strongly prohibits, and the Penal Code punishes with heavy penalties. Nothing here to remind one of the barbaric severity of the Orient: everywhere the milder spirit of humanity prevails, and promotes conciliation even where the legislator must speak to the people in tones of severity.

Following these introductory remarks we give a sketch first of the Penal Code and then of the Criminal Procedure. We shall rejoice if both Codes in practice answer the admirable intention of the legislator. Japan may take to herself the credit of having, by this codification, advanced an important stage towards European civilization; nothing helps to establish bonds of friendship between alien peoples so much as legislative deeds. And Japan, by means of these two Codes has really accomplished a deed—a feat, in the fullest sense of the word—a feat in the field of intellectual, moral, and scientific effort, which ensures for her the undivided admiration of Europe.

Book I.—General Provisions.

Chapter I.—On the application of the penal law in general.

Art. 1.—The offences punishable according to the law are:

1. Crimes.
2. Delicts.
3. Contraventions.

Art. 2.—No one can be subjected to a penalty excepting in virtue of an express provision of the law.

Art. 3.—This law is not retroactive upon offences committed before it came into force.

In case of a difference of law at the time of the commission of a crime and the trial of the same, the mildest law is to be applied.

Art. 4.—The Provisions of the Penal Code are not applicable to persons amenable to military or maritime law.

Art. 5.—The particular penalties prescribed by special penal laws and regulations remain in force in so far as they are not otherwise determined by the present law.

Chapter II.—On Penalties.

Section I.—On the different character of penalties.

Art. 6.—Penalties are principal or accessory. Principal Penalties are to be pronounced in open Court.

As to accessory penalties the law prescribes which shall and which shall not be so pronounced.

Art. 7.—The principal penalties for crimes are:—

1. Death.
2. Penal servitude for life.
3. Penal servitude for a term.
4. Transportation for life.
5. Transportation for a term.
6. Major confinement.
7. Minor confinement.
8. Major detention.
9. Minor detention.

Art. 8.—The principal penalties for delicts are:—

1. Major imprisonment.
2. Minor imprisonment.
3. Correctional fine.

Art. 9.—The principal penalties for contraventions are:

1. Attachment.
2. Fine by the police.

Art. 10.—Accessory punishments are:

1. Deprivation of civic rights.
2. Suspension of civic rights.
3. Prohibition of private rights.
4. Special police supervision.
5. Fine.
6. Special confiscation.

Art. 11.—A general order will regulate the mode of punishment, the details of the execution of each penalty, and the disciplinary treatment of the condemned.

SECTION II.—ON THE PRINCIPAL PENALTIES.

Art. 12.—The penalty of death is executed by hanging. The execution takes place inside the prison, in presence of persons designated by the general order.

Art. 13.—The penalty of death cannot be executed until after the receipt of a formal order from the Minister of Justice.

Art. 14.—The death penalty must not be executed on a national or legal holiday.

Art. 15.—If a woman condemned to death is *enceinte*, the execution shall be delayed, and cannot take place within 100 days after her delivery.

Art. 16.—The corpse of the executed criminal shall be given to his relations or friends, on condition that they bury the same without external pomp.

Art. 17.—Men condemned to penal servitude, whether for life or temporarily, undergo their punishment on an island, where they shall be kept at such employments as shall be determined by the regulations.

Penal servitude for a term shall have a duration of from 12 to 15 years.

Art. 18.—Women and girls, condemned to penal servitude, undergo their punishment in a penitentiary in the interior of the country, and are there to be kept at work according to the regulations.

Art. 19.—All persons condemned to penal servitude, over 60 years of age, are to be kept at only such work as is commensurate with their strength.

Art. 20.—Those who are condemned to transportation whether for life or for a definite time, shall be brought to an island, where they shall be confined in a special prison without compulsory labour. Transportation for a term has a duration of from 16 to 20 years.

Art. 21.—After undergoing their penalty for five years, criminals, condemned to transportation for life, may by a decree of the Government be released from prison and be allowed to settle in an allotted part of the same island; the same favor may be extended to those condemned to temporary servitude after the expiration of three years.

Art. 22.—Confinement takes place in a penitentiary in the interior of the country, and is accompanied by compulsory labour according to the regulations. Art. 19, applies to those who are over 60 years of age. The maximum of the penalty of major confinement is 11 years, the minimum, 9 years: minor confinement, maximum 8 years, minimum 6 years.

Art. 23.—The penalty of detention is undergone, without compulsory labour, in a particular prison in the interior of the country. Maximum duration of major detention is 11 years, minimum 9 years: minor detention, maximum 8 years, minimum 6 years.

Art. 24.—Imprisonment is undergone in a house of correction (Maison de correction). Major imprisonment entails compulsory labor, minor imprisonment does not. The law fixes for every offence the minimum and the maximum of both grades of imprisonment, between eleven days and five years.

Art. 25.—In all cases in which the penalty entails compulsory labor a part of the proceeds of this work shall be applied to the expenses, and the rest kept for the condemned according to the proportion laid down by the regulations. He receives this latter sum, however, only in case he has wrought more than 100 days.

Art. 26.—The fine (for delicts) is 2 *yen* and upwards. The law lays down the minimum and maximum for every punishable offence.

Art. 27.—The correctional fine must be paid within a month from the day on which sentence is passed. If not fully paid within that time it shall be converted into simple imprisonment at the rate of one day for a *yen* or portion thereof.

The conversion of such imprisonment cannot, however, exceed 2 years. The condemned can regain his freedom by paying the balance of his fine not yet cancelled by his time in prison. His family or any third party can do this service for him.

Art. 28.—The penalty of attachment consists in a simple deprivation of liberty by confinement in a jail appointed for that purpose. The law determines the minimum and maximum of arrest for every contravention at from 1 to 10 days.

Art. 29.—The fine in cases of contraventions is a minimum of 5 *sen* to a maximum of 1 *yen* 95 *sen*. The law fixes the minimum and maximum for every offence.

Art. 30.—The fines imposed in cases of contraventions are to be paid inside of ten days after the sentence is passed, and in case of non-payment shall be converted into attachment at the rate given in Art. 27.

SECTION III.—ON ACCESSORY PENALTIES.

Art. 31.—Deprivation of civil rights entails on the condemned:—

1. The loss of those rights which belong exclusively to Japanese subjects.
2. Removal and exclusion from every position in the service of the Government and from every public office.
3. Loss of every pension, every nobiliary or honorary title and every national decoration.
4. The prohibition to wear foreign decorations.
5. The incapacity to serve in the land or marine forces of Japan.
6. The incapacity to give evidence in Court (excepting to be used as a means of obtaining information.)
7. The incapacity to become guardians or trustees, excepting in cases of descendants where the consent of relatives is given.
8. The incapacity to be assignee or administrator of a bankrupt, of a society, corporation, or of any collective interests whatever.
9. The incapacity to be the principal of any institute of learning, or to have any position in such as teacher or warden.

Art. 32.—Any sentence on account of crime entails *ipso facto* the forfeiture of all civil rights for life.

Art. 33.—The sentence to imprisonment for a misdemeanor entails *ipso facto* the forfeiture of all public functions and offices, with which the condemned was invested, and the prohibition of the exercise of all other civil rights during the period of his imprisonment.

Art. 34.—The condemnation to a penalty on account of a delict, which entails police supervision carries with it *ipso facto* the prohibition of the exercise of all civil rights during the term of police surveillance.

Art. 35.—Every condemnation on account of crime entails with it, during the term of the penalty, the prohibition of the exercise of all private rights.

Art. 36.—Persons condemned to transportation for life or for a term, who have undergone the period of their detention prescribed in Art. 21 may be admitted by an administrative enactment, to the exercise of all their private rights, or at least to a part of them.

Art. 37.—The condemnation to a criminal penalty entails *ipso facto* the being placed under police surveillance for a time which shall be equal to at least one third of the minimum of the penalty prescribed by the law.

Art. 38.—The sentence of police surveillance resulting from a condemnation for a delict, shall be pronounced only in cases prescribed by the law, or by a special judicial decision.

Art. 39.—Those condemned to death or to imprisonment for life, whose punishment has been commuted are *ipso facto* to be subjected to police surveillance for a term of five years.

Art. 40.—Police surveillance begins on the day on which the principal punishment has ceased: in case the principal penalty should have lapsed, it begins with the day of the arrest of the criminal.

Whenever police surveillance is the only penalty incurred, and no principal penalty is undergone, it begins on the day on which the sentence is pronounced.

Art. 41.—Police surveillance may be suspended in accordance with an administrative decision, according to circumstances and the conduct of the condemned.

Art. 42.—Fine as an accessory penalty must be pronounced in open court. If not paid within one month, it is to be changed (in the same way as in Art. 27) into simple imprisonment, and must be undergone after the principal penalty.

Art. 43.—The Court pronounces the sentence of special confiscation:—

1. Respecting articles prohibited by law.
2. Respecting articles which were made use of in the commission of punishable acts.
3. And such articles obtained or produced by punishable acts.

Everything, apart from special confiscations, that shall be prescribed by special laws or regulations.

Art. 44.—Articles prohibited by law shall be confiscated without respect to their owners; Articles, which have been used for the commission of offences, or which have been obtained or produced by punishable acts, can be confiscated only when they are the property of the condemned, or their owner cannot be found.

Section IV.—Of Costs of Court and Claims for Damages.

Art. 45.—In every penal case, the condemned may be charged with the whole or with a part of the costs.

Art. 46.—Penal condemnations and acquittals are to affect in no wise the claims in civil law of the injured party.

Art. 47.—All persons, condemned as co-actors or accomplices in one and the same offence, are held, conjointly, responsible for payment of costs and for the satisfaction of claims in civil law.

Art. 48.—On the demand of the injured party, the penal Courts may determine the costs of Court, the restitutions, and the civil indemnifications; and if the articles illegally taken are in the possession of the condemned, may order the restoration of the same, even without the demand of the injured party.

Section V.

Contains the necessary regulations for calculating the duration of penalties conformably to the new law (Art. 49-52). If the condemned

makes an appeal and is successful, the time of the penalty is reckoned from the day on which the first sentence was pronounced: if the appeal be rejected, from the day of the decision of rejection. If the public administration files an appeal, the penalty always begins on the day of the first sentence, irrespective of the result of the appeal—Any time during which the accused enjoyed provisional personal freedom as well as such as may have expired during a temporary flight is not reckoned in as a part of the duration of the penalty.

SECTION VI.

Treats of [9]conditional discharge (Arts. 53-59) Persons who have been sentenced for a crime or for crimes, who have undergone three fourths of their penalty, and who by their good conduct have given proof of amendment, may, by an administrative decision, be conditionally discharged.

Persons condemned to penal servitude for life may claim the same favour after fifteen years servitude; those condemned to penal servitude must, even when conditionally discharged, remain in the island to which they have been sent. Persons thus conditionally discharged, may be allowed the exercise of the whole or a part of their private rights, as determined by administrative decision. During this time however they are subjected to police surveillance. Should the person thus conditionally discharged commit a new crime or delict, the conditional discharge will be at once annulled, and the time thus spent up to the second committal shall not be reckoned as a part of the fixed duration of the penalty. Those who commit a new crime or delict during the course of their penalty have no claim to the privilege of conditional discharge.

SECTION VII.

Treats of the prescription of penalties (Arts. 58-62). The regulations regarding the prescription of criminal charges are contained in the Criminal Procedure (General Regulations Arts. 11-15). The length of time which entails prescription of principal penalties are: 30 years for the death penalty, 25 years for penal servitude for life and transportation for life, 20 years for penal survitude for a time or for transportation for a time, 15 years for major confinement and major detention, 10 years for minor confinement and minor detention, 7 years for imprisonment with or without compulsory labour and for correctional fines in case of delicts, 1 year for attachment and for fines in cases of contraventions. There is no prescription for loss or suspension of civic rights and police surveillance. Fines, as accessory penalties, cease by prescription with the principal penalty; special confiscation is prescribed in five years; confiscation of articles forbidden by law however is not affected by any prescription. The prescription begins on the day on which the condemned withdraws himself from the execution of the penalty. It ceases with his re-arrest. If he escapes again a new term for prescription begins.

SECTION.—VIII.

Treats of Rehabilitation (Arts. 63-65). Rehabilitation may be granted to persons condemned to the loss of civic rights, according to the circumstances of the case, in five years after the principal penalty has been undergone. Amnesty entails *ipso facto*, rehabilitation: pardon, only when rehabilitation is expressly granted. The Emperor only can grant the favour of rehabilitation.

CHAPTER III.

Treats of the raising or lowering of penalties by gradations (Arts. 66-73).

The following is the order of gradation for ordinary criminal penalties: 1 death, 2 penal servitude for life, 3 penal servitude for a term, 4 major confinement, 5 minor confinement. For penalties on account of political crimes 1 death, 2 penal servitude for life, 3 penal servitude for a term, 4 major detention, 5 minor detention.

When the penalty of confinement or imprisonment is to be lowered one or more degrees, the Court shall pronounce (for lowering one degree) for the former, imprisonment with compulsory labour, for the latter, simple imprisonment, both for from two to five years.

In cases of lowering or raising the penalties of imprisonment and correctional fines by gradation, &c. the calculation is made in the proportion of a quarter of the legal penalty to one degree, to which extent the legal maximum or minimum shall be lowered or raised. In this case the imprisonment penalty may run to 7 years. If all gradations of diminution are exhausted, sentence for attachment and police fines may be passed, and endured, under the legal minimum, down to one day or five *sen*.

CHAPTER IV.

Treats of the *Reasons for exemption or diminution of penalties*. The first section gives the reasons for exemption and the so-called legal excuses. (Arts. 75-84).

No penalty is imposed upon those who act under the influence of irresistible compulsion. The same holds good for cases of peril in which the offender or his relatives are placed.—Any person acting in accordance with the command of a lawful superior and within the jurisdiction of the same, is exempt from penalty. Those are also exempt who commit a breach without criminal intent; with the exception of cases where the law by express regulations punishes negligence. Persons ignorant of the constitutive circumstances of the breach are free from penalty. If the ignorance is limited to the

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aggravating circumstances of the act, the aggravating circumstances are overlooked.

Persons deprived of their reason at the time of the offence are exempt from punishment (privé de raison. Art. 78).

Persons who at the time of the offence had not reached the 12th year of their age are exempt. Nevertheless the court can, according to circumstances, and the gravity of the offence, order that a child over eight years of age shall be placed in a house of correction (emprisonnement de garde) until his 16th year.

If the accused at the time of the deed was between 12 and 16 years of age, the court must specially decide whether he acted with or without power of discrimination. In the latter case there is no penalty; still the accused may be placed in a house of correction until the end of this 20th year. If he has acted with discernmen he has the benefit of a legal excuse and his punishment is lowered two degrees. If, at the time of the offence the accused is between 16 and 20 years of age he has the benefit of a legal excuse, and his penalty is lowered one degree.

Deaf-mutes are always exempt, but they may, according to circumstances, be placed in an asylum for 5 years.

Minors between 16 and 20 years, who commit a contravention, undergo the full penalty of the same, a lowering of one degree is allowed only in case of those between 12 and 16. If they have not yet reached the age of 12 years they are exempt as are deaf-mutes.

Other cases of exemption and legal excuse, are laid down in special parts of the law.

In one special section (II. Art. 85-88) the lowering of penalties on account of voluntary denunciation is explained. Voluntary denunciation to the authorities before these have become aware of his guilt benefits the offender by lowering his penalty one degree, excepting in cases of murder or assassination. A lowering of two degrees is effected in cases of delicts against the goods of another, if the offender voluntarily denounces his act, and restores voluntarily and wholly the stolen property, or makes ample restitution. In cases of delicts against property the denunciation to the injured party has the same effect as to the authorities.

Section III. recognizes the extenuating circumstances, the existence of which, in any penal case, the judges may hold as an extenuation for the accused, and which are admissible even when the accused has had the benefit of one or more legal excuses, or when there are aggravating circumstances. The admission of extenuating circumstances has the effect of lowering the penalty at least one degree and at most two degrees (Art. 89 and 90).

The repetition of an offence, according to Chapter V. (Art. 91-98) entails a special augmentation of the penalty; the law makes a difference in cases of crimes, delicts, and contraventions. Whoever, having once been condemned to a criminal penalty, again commits a crime, suffers one degree greater punishment, so also any one who has once been condemned for a crime or delict, and again commits a delict.

Repetition of a contravention entails an increase of one degree in the penalty, whenever the second offence occurs in the same year and within the jurisdiction of the same police court. Every application of a penalty for repetition presupposes the legal continuance of the first penalty at the time of the commission of the new offence. If the repetition occurs while the first penalty is being undergone, the various penalties are to be undergone successively. Augmentation of penalty for repetition does not occur when the first offence is pardoned. These regulations have the same force for a second repetition. If aggravating and extenuating circumstances which are specially given in the general regulations occur simultaneously, the calculation of the penalty shall be made in the following order:—1. Aggravation for repetition. 2. Application of legal excuses. 3. Diminution on account of voluntary denunciation. 4. Extenuating circumstances (Art. 99 of Chap. VI.)

Chapter VII (Art. 100-103) treats of cases of concurrence, that is the concurrence of several offences committed by the same person. Only one process is presupposed for all. In cases of concurrence of crimes or delicts the principle of absorption of the French *code pénal* is followed, *i.e.* the severest punishment alone is inflicted, and is reckoned according to length; in cases of equal duration, that is considered the severest to which compulsory labour is attached.

In cases of the concurrence of several contraventions, the principle of cumulation is followed; if contraventions concur with crimes or delicts the absorption principle is again followed. If an offender, against whom a penal sentence has already been pronounced, is found guilty of another offence committed before the aforesaid penal sentence was pronounced, no fresh penalty is added if the newly discovered offence is less than the first; and only in so far as the second offence is greater than the first, is there any penalty inflicted and then only the excess over the penalty already inflicted.

Chapter VIII treats of Participation of several persons in one and the same offence. Section I. deals with the authors, intellectual as well as physical, including the idea of co-actors (Art. 104—108), and Section II. deals with accomplices.

If two or more persons with common consent directly participate in the accomplishment of a punishable offence, each one is considered co-actor of the same, and incurs the usual penalty for such delict.

Persons, who in any way instigate another to the commission of a crime or a delict are

considered co-actors. If the law on account of personal character or circumstances, augments the penalty of the prepetrator, these special circumstances are not to be reckoned against co-actors, accomplices, or instigators.

In case the instigation was intended for a definitely fixed offence, and the perpetrator, under the influence of this instigation commits a different offence, the instigator is not responsible for the excess over and above his instigation, and, if the actual offence is greater, is to undergo only the penalty of the offence to which he had given the instigation. On the other hand, if the offence which he had instigated is greater than the one actually committed, he incurs only the penalty of the latter.

Persons who impart instructions to a perpetrator, procure tools or any other means which serve to accomplish or to facilitate the perpetration of the offence, and those who have knowingly aided or facilitated the commission of the deed by preparatory acts, are considered accomplices and receive the penalty for the perpetration of the offence, diminished by one degree. (Art. 109).

Personal character or circumstances, which procure exemption or extenuation for the perpetrator, do not affect the accomplices.

Chapter IX, Art. 111-113, defines the matter of punishable infractions not consummated.

The mere intention to commit a breach and acts simply preparatory thereto are punishable only in cases provided by the law.

The attempt to commit an offence, which is discovered by means of the beginning of the undertaking, if the failure to accomplish the offence result from accident or from circumstances independent of the will of the perpetrator, entails the same penalty as that for the actual crime with an abatement of one or two degrees. All the principles relative to attempt are applicable also to attempted delicts. *(Delit manqué)* Attempts, whether finished or not, entail a penalty only in cases of such delicts as are expressly provided for by the law.

The attempt to commit a contravention is never punishable.

The last Chapter of Book I. gives a list of the persons who, in the eyes of the law, are considered relatives and allied, and describes in minutiæ the degrees of relationship (Art. 114 and 115).

The Second Book deals with crimes and delicts against the Commonwealth. Chapter I refers to crimes and delicts against the Emperor and his family (Art. 116-120):

Every assault, accomplished or attempted, on the person of the Emperor, the Empress, the Empress Mother, or Imperial Prince, or Heir-presumptive to the throne, entails the death penalty; every insult offered his Imperial Majesty or the Imperial Heir, entails imprisonment with compulsory labour for from 3 months to 2 years, and a fine of from 20 to 200 *yen*. Insults offered to Imperial tombs are punishable with the same penalty. Every assault against the person of members of the Imperial family entails the death penalty: an attempt entails penal servitude for life. Insults against the same entail a penalty of major imprisonment for from 2 months to 4 years and a fine of from 10 to 100 *yen*. The second chapter treats of "crimes and delicts against public security," the first section of which deals with crimes and delicts against the internal safety of the State (Art. 121-129). The highest degree of guilt in this regard attaches to persons who are proved to have participated in a civil war, an insurrection or armed sedition, having for its object the overturning of the Government, or the removal from imperial control of any part of the Empire of Japan or her colonies, or to diminish the rights and prerogatives of the Emperor in the government of the country. These crimes entail, according to the degree of guilt, penalties ranging from the highest, death, down to imprisonment for a term of years. In these cases the penalty of confinement in State prisons is inflicted as well as transportation. Simple conspiracy to undertake the afore-mentioned crimes entails the penalty diminished by two degrees.

Section II treats of crimes and delicts against the external security of the State (Art. 129-135). The death penalty is inflicted on all Japanese subjects who bear arms along with the enemy against Japan or her allies in a foreign war. The death penalty is inflicted in cases of treason in time of war by opening to the enemy the territories of Japan, or her cities, fortresses, armaments, munitions of war, ships of war, &c., &c. The betrayal of military secrets in time of war is punishable with transportation for life. Transportation for a term of years is inflicted on a Japanese subject who, conniving with the enemy or on account of a bribe, fails to furnish the army with supplies or works which he had undertaken to provide.—A Japanese who, in time of war between foreign states, in regard to which Japan has declared herself neutral, commits a breach of the neutrality, is punishable with a penalty of simple imprisonment for from 6 months to 3 years and with a fine of from 10 to 100 *yen*.

Chapter III. treats "Of crimes and delicts against the public peace." Section I. treats of rebellion (Art. 136-138), Section II. of "Resistance against public functionaries."

The penalty is the same, whether the insult be offered in the absence of the official, by means of the press, or in public addresses. A penalty of major imprisonment from 4 months to 4 years and a fine of from 5 to 50 *yen* is inflicted on any one who offers resistance, by force or by severe threats, to any official who is called upon to execute laws, regulations of the authorities, or the sentences and judgments of Courts of

Justice, presupposing the official to have acted in the legitimate exercise of his functions. Contempt and insult towards an official in the exercise of his functions or on account of the same, even if committed by gestures only, are punished with major imprisonment for from 1 month to 1 year, and a fine of from 5 to 50 *yen*.

Section III.: "Of the escape of prisoners and the concealment of offenders" (Art. 142-153). A criminal who shall set himself at liberty incurs a penalty of imprisonment for from 1 month to 6 months: if accomplished by force or with acts of violence, the penalty is imprisonment for from 3 months to 3 years.

The punishment is augmented in case of escape by the conspiracy of several persons. Whoever assists a prisoner to escape, by furnishing him with weapons or other means, incurs, with differences noted above, a penalty of imprisonment for from 3 months to 3 years and a fine of from 2 to 20 *yen*, and in certain cases an augmentation of one degree. Whoever, by means of force or threats, sets a prisoner at liberty or abets his escape, incurs a penalty of imprisonment for from 1 to 5 years and a fine of from 5 to 50 yen, and minor confinement if the prisoner had been sentenced to a criminal penalty. Negligence resulting in the escape of a prisoner entails a fine of from 2 to 20 *yen*. Whoever knowingly receives or hides an offender or an escaped prisoner, incurs a penalty of imprisonment for from 11 days to 1 year and a fine of from 2 to 10 *yen*, which penalty will be augmented one degree if the offender has been sentenced to a criminal penalty. A penalty of imprisonment for from 11 days to 6 months and a fine of from 2 to 20 *yen* is inflicted upon any one who, with the purpose of shielding an offender from punishment, conceals evidences of his crime. Relatives of and those allied to the offender are not affected by the provisions of the last two articles.

Section IV. (Art. 154-156) details the penalties to be inflicted on persons who withdraw from the execution of accessory penalties.

Whoever, in face of the fact that he has incurred deprivation or suspension of civic rights, fraudulently exercises one or more of the same, incurs major imprisonment for from 1 month to 1 year and a fine of from 2 to 10 *yen*.

The manufacture and illegal possession of weapons and munitions of war are treated of in Section V. (Art. 157-161). The penalty varies between major imprisonment for 1 month to 1 year with a fine of 10 to 100 *yen* and imprisonment for 2 months to 2 years with a fine of 20 to 200 *yen*.

Section VI. treats "of the Destruction and Injury of Means of Communication" (Art. 162-170) in the same way as the impeding or interrupting of the postal service, telegraph communication, endangering of railway trains ships, &c. If these acts result in the death or injury of persons, the penalties fixed for these crimes in so far as they are more or less serious are here applied. Running of trains off the track, or shipwreck entails a penalty of penal servitude for life; and the death penalty is inflicted if the act entails loss of life.

Section VII. treats "of Breach of security of habitations" (Art. 171-173). Illegal intrusion into another's house is punished with major imprisonment from 11 days to 6 months, and the penalty is augmented one degree if the intrusion is accomplished by force or by means of weapons, or is accompanied by acts of violence against persons, or if committed by several persons acting in concert. Intrusion by night is punished with imprisonment for from 1 month to 1 year: the penalty is augmented by one degree whenever the intrusion is in Imperial residences or tombs.

The illegal breaking of an official seal entails also heavy penalties (Imprisonment from 2 months to 2 years. Section VIII. Art. 174-176). So also the refusal to fulfil official or legal duties (Section XI. Art. 177-181). Self-mutilation in order to avoid military service, or the use of other means for the same purpose, is punishable with imprisonment for from 1 month to 1 year, or a fine of from 3 to 30 *yen*. Any physician, chemist or other person summoned by the authorities on account of their calling, who shall, without legitimate excuse, refuse to undertake *post mortem* examinations, an *expertise* or any other examination whatsoever, incurs a fine of between 4 and 40 *yen*. The same penalty is inflicted on such as are summoned as witnesses in Court, and refuse to give evidence without legal excuse. Physicians are fined 5 to 50 *yen* who in case of epidemic refuse their assistance without ligitimate cause.

Chapter IV deals with crimes and delicts against public trust, and first of all (Section I, Art. 182—193) monetary crimes and delicts. Penal servitude for life is the penalty for the counterfeiting and uttering in Japan of Japanese coin or paper currency. The simple debasing of genuine money and circulating the same is punished with only minor confinement.

Foreign gold and silver coins, current in Japan, are also placed under protection by the provisions of this Code, and so also are banknotes, considered as money, which are issued by legalized Japanese or foreign banks.—Acts merely preparatory to counterfeiting, such as the providing of plates, forms, &c., are also placed under a penalty.

Exemption from penalty is promised to such counterfeiters as voluntarily give notice to the authorities before the counterfeited coin or paper money has been put into circulation. Whoever accepts counterfeit or falsified money as genuine, and after knowing it to be false again circulates the same, incurs a fine of double its pretended value.

Section II. contains the penalties for falsification of official seals, stamps, and marks. Counterfeit or fraudulent use of the seal of the Emperor or of the Empire is punished with penal servitude for life; that of a public authority, with major confinement. The law favours international exchange of merchandise, and furthers the interests of commerce in Japan, by inflicting the severe penalty of minor confinement (6 to 8 years) upon those who counterfeit official stamps, trade-marks, or other marks of merchandize and industrial products, or who simply make a fraudulent use of the same. This notable protection is also seen in the fact that the severe penalty of imprisonment for from 1 to 3 years is imposed upon any one who counterfeits or fraudulently uses trade marks or stamps on books and other articles.

The counterfeiting of stamped papers, postage, and other stamps of the State or the public administration, as well as the intentional use of the same, entails the penalty of major imprisonment for from 1 to 5 years, and a fine of from 5 to 50 *yen*. The use of stamps, &c., that have already been used entails a fine of from 2 to 20 *yen*.

Section III. treats of the falsification of public documents. The counterfeiting or falsification of an imperial document is punishable with penal servitude for life; falsification (or destruction) of other public documents, with minor confinement. The same penalty is inflicted on any one who falsifies and makes fraudulent use of title-deeds, of treasury bonds, title-deeds of landed property, or other authentic documents. A particular anxiety to protect the interests of commerce is seen in the fact that the penalty is augmented one degree when the bonds issued from the treasury are not payable to order.

Section IV. treats "of the falsification of private seals or documents" (Art. 208-212). A forger who makes fraudulent use of these articles is punishable with major imprisonment for from 6 months to 5 years and a fine of from 5 to 50 *yen*. The use of the real seal of another person is considered an extenuating cause and diminishes the penalty.

The forgery of a bill of exchange, a bill payable to order, or by some other endorsation, or payable to bearer, as well as the fraudulent use of the same, is punishable with minor confinement. Forgery or falsification of any other private document of commercial or civic intercourse, which relate to sale, loan, gift, exchange, or other legal obligations, if knowingly used, is punishable with major imprisonment for from 4 months to 4 years, and a fine of from 4 to 40 *yen*. The attempt is also punishable.

Section V. (Art. 213-217) contains penalties against the use of forged passports, &c., and forged certificates of sickness. A severe penalty (imprisonment for from 1 month to 1 year, and a fine of from 3 to 30 *yen*) is inflicted upon any one who, by the use of a forged certificate of illness, attempts to release himself or another from any legitimate service. The penalty is augmented one degree in the case of a physican, and also for the use of a forged certificate in order to escape military service.

Forgery and falsification are everywhere reckoned to be equal offences.

Section VI treats of *Perjury* (Art. 218-226). Here certain distinctions are observed (a) between criminal and civil cases: (b) in criminal cases the penal regulations are arranged accord- to the gravity of the offence with regard to which the perjury is committed; and lastly (c) regard is had to the fact whether the perjury is in favour of the accused or to his injury. The law punishes with exceptional lenity perjury in penal cases in favour of the accused, in criminal cases major imprisonment for from 2 months to 2 years and a fine of from 4 to 40 *yen*, in cases of delicts, major imprisonment for from 2 months to 2 years, and a fine of from 2 to 20 *yen*; in cases of contravention simple police penalties (attachment or fine). These penalties are augmented one degree only in case the accused, in virtue of the false testimony, escapes a legitimate penalty. On the other hand if the testimony is given to the disadvantage of the accused, the penalty is disproportionately severer, without however being raised to a criminal penalty; even in these cases it does not exceed major imprisonment (in criminal cases 2 to 5 years and fine of from 10 to 50 *yen*; in delicts, 6 months to 2 years and a fine of from 4 to 40 *yen*; in contraventions from 1 to 3 months and fine of 2 to 10 *yen*). It is here evident how in this Code the fine is used as a cumulative penalty for delicts, as indeed is the case with nearly all delicts in this penal code, to a greater extent than in any other penal legislation. It is also seen that in many cases of delicts the deprivation of personal liberty is remarkably small, the often unnecessary severity of the excessive duration of a penalty being exchanged for a fine of considerable magnitude. If however an accused person, in consequence of perjury, be condemned to a penalty severer than stated above, and if his innocence be established only after having undergone the punishment, the perjurer incurs the same penalty (as the accused) which, in case of partial infliction of the penalty on the condemned, may be diminished in accordance with the proportion of the same. With regard to the death penalty only the law makes an exception. If the penalty of death has been inflicted on the unhappy victim of perjury, the perjurer has the benefit of a diminution in his penalty of one degree; if the sentence had not yet been executed, the perjurer has a diminution of two degrees. If the perjurer, however, is proved to have intentionally brought about the

condemnation of the accused to the penalty of death, he suffers the same penalty.

A person who is guilty of perjury in a civil, commercial or administrative case, is, strange to say, punished with only major imprisonment for from 1 month to 1 year, and a fine of from 5 to 50 *yen*. These penal regulations are applicable to experts and interpreters, and also to persons guilty of causing others to commit perjury:—If the perjury be recalled before sentence be pronounced the perjurer is exempt from penalty. —Proportionately severer penalties are inflicted on persons who counterfeit weights and measures, or falsify the same, and bring them into use (Section VII Art. 227-230), imprisonment for from 2 to 5 years and fine from 10 to 50 *yen*.

Section VIII (Art. 231-232) contains the penalties against the use of fictitious names, the unlicensed wearing of orders, &c., and Section IX (Art. 233-236) against falsification at a public election (imprisonment for from 1 month to 1 year, and a fine of from 2 to 20 *yen*). Whosoever in a public election buys or sells a vote, is punished with imprisonment for from 2 months to 2 years and a fine. Heavier penalties are inflicted on persons entrusted with the gathering of ballots or votes, and the announcing of the results, if they are guilty of falsification of the returns. (Imprisonment for from 1 to 5 years and a fine of from 5 to 50 *yen*).

Chapter V. deals with crimes and delicts against the public health. Section I, with the trade in opium and the use of the same. (Art. 237-247). The production, importation, or commercial use of opium intended for smoking, within the limits of the Empire of Japan is punishable with penal servitude for a term; persons guilty of making or introducing into Japan or selling apparatus for the smoking of opium, are punishable with minor confinement.

The afore-mentioned penalties will be augmented one degree in cases of agents or Custom House officers who in the exercise of their functions connive at the introduction of opium or opium-smoking apparatus. Minor confinement awaits anyone who provides a place for opium-smoking and receives profit therefrom, or who incites another to the use of opium.

The opium smoker himself incurs a penalty of major imprisonment for from 2 to 3 years; and even the mere possession of smoking opium or the appropiate apparatus for the same entails imprisonment for from 1 month to 1 year.

Section II contains severe penalties against the adulteration of potable waters, (Art. 243-245) pollution or the addition of injurious substances. Section III (Art. 246-249) lays down the penalties for offences against sanitary regulations, in particular the breaking of quarantine regulations in time of an epidemic. Section IV (Art. 250-252) treats of "breaches of the regulations for dangerous or unhealthy industries," Section V (Art. 253-255) of the sale of food or drinks injurious to health, and Section VI (Art. 256-257) of the illegal practice of medicine.

Chapter VI deals with delicts against good morals (Art. 258-263).

Public commission of acts contrary to decency is punished with a fine of from 3 to 30 *yen*. The sale of obscene books and pictures, a fine of from 4 to 40 *yen*. The keeping of a gambling hell entails imprisonment for from 3 months to 1 year and a fine of from 10 to 100 *yen*; persons caught in the act of gambling incur a penalty of imprisonment for from 1 to 6 months and a fine of from 5 to 50 *yen*. Exception is made in favour of games of chance in which the stakes are articles for immediate use.

The organization of a lottery for gain is also placed under the ban of a penalty.

Finally—and the lenity of this regulation is in striking contrast with those of the continent—a simple fine of from 2 to 20 *yen* is inflicted on any person who shall have been guilty of publicly insulting the exercise of religious services in a temple, a grave-yard, or any other sacred place, and the penalty shall be augmented to from 4 to 40 *yen* if the service has been disturbed thereby.

Chapter VII lays down the penalties for delicts against the bodies of the dead and against tombs. (Art. 264-266), mutilation of a corpse, or the abandonment of the same before burial, destruction or injury of tomb-stones, entail suitable punishments of imprisonment and fines.

Chapter VIII contains the penalties incurred by offences against commercial liberty, and the freedom of industrial and agricultural labour (Art. 267-272). Whoever by stratagem or force hinders the sale of rice or other necessary articles of food incurs a penalty of major imprisonment for from 1 to 6 months and a fine of from 3 to 30 *yen*.

Labourers who, in order to raise their wages or improve the conditions of their contracts, by stratagem or force compel other labourers to strike, and employers who, with the same object, by stratagem or force hinder their labourers or other employers in their work, incur relatively severe penalties.

Fictitious causing of fluctuations in the price of indispensible articles of food is punished with a fine.

Chapter IX treats of crimes and delicts of officials in public service. And, first of all, in so far as these crimes affect the public welfare (Art. 273-275), the refusal to execute the service required by law or regulation, the intentional disregard of the call of the armed power for the suppression of an insurrection, a mutiny in the army, or a rising against the Government, incur various penalties of minor imprisonment for from 2 or 3 months to 6 months or 3 years and fines.

The regulation in Art. 275 is peculiar, which threatens with a fine of between 20 and 500 *yen*

the official who shall, contrary to his intstructions, engage in commercial transactions.

These delicts of officials include also those against the person (Art. 276-288). And first, misuse of his official power in illegally compelling another to do, suffer or cease from an act. The penalty is strikingly lenient; minor imprisonment for from 11 days to (only!) 2 months and fines of 2 to 20 *yen*. An official (magistrate, state prosecutor, police officer) who by virtue of his office is bound to assist in the execution of the penal code, is punished with imprisonment for from 15 days to 3 months, and a fine of from 2 to 20 *yen*, if he neglects to prosecute for a punishable offence, with the intention of allowing any one to escape illegally from a legal penalty. A police officer, who, without observing the legal formalities, or without just cause, undertakes an arrest, incurs a penalty of imprisonment for from 15 days to 3 months and a fine of from 2 to 20 *yen*, which penalty is augmented one degree for every ten days during which the illegal detention continued. The same penalty holds good for illegal detention by a director of a House of Correction. Ill-treatment of prisoners, the denial to them of food or clothing entails a penalty of imprisonment for from 9 months to 3 years and a fine of from 4 to 40 *yen*.

This admirable care for the welfare of helpless and defenceless prisoners is seen also in Art. 281, according to which officials, who neglect to release their prisoners in case of flood, conflagration, or earthquake, and thereby occasion their death or injury, incur the penalties for intentional wounding augmented one degree. Judges, procureurs, and police officials, who are guilty of acts of violence or abuse against an accused person with the intention to extort from him confessions or declarations incur a severe penalty of imprisonment for from 4 months to 4 years and a fine of from 5 to 50 *yen*.

Further the refusal to admit a declaration or a complaint, without legal cause, or the neglecting to make a decision thereon in Civil and Penal cases is also punishable. Art. 284 gives the comparatively lenient penalty for passive bribery, of imprisonment for from 1 month to 1 year and a fine, and augments the penalty by one degree only when the official is influenced by the gift to commit an act contrary to regulation or law. The penalty is suitably augmented where judges in civil cases accept bribes or where judges, officials, procureur, or police accept a bribe in penal cases. And yet the penalty is only imprisonment for from 3 months to 3 years with fine of from 10 to 100 *yen*, if the decision effected by the bribe is illegal and to the advantage of the accused.

If it is to the disadvantage of the accused, the penalty of imprisonment is considerably augmented (2 to 5 years and fine of 20 to 200 *yen*). If the penalty to which the accused was condemned is greater than that above mentioned, the guilty officials incur the penalties described in Art. 221 and 222 (in cases of condemnations caused by perjury). The same penalties are inflicted where justice is perverted from other causes besides bribery.

In all cases of bribery the accepted gifts or the value of the same must be declared in the sentence to be confiscated for the State.

Section III. punishes official crimes and delicts against property, (Art. 289-291). Official embezzlement entails the severe penalty of minor confinement, which in case of concurrence of falsification of documents is augmented by one degree. Intentional and illegal collecting of imposts, taxes &c., which are not due, entails the penalty of imprisonment from 2 months to 4 years and a fine.

Book III.—Of Crimes and Delicts against the Person and Property of Private Individuals.

Chapter I.—Of crimes and delicts against the person.

Section I. treats of premeditated murder, and other cases of homicide (Art. 292-298) essentially in harmony with the *Code Pénal* (Art. 205 &c., &c.)

Voluntary and premeditated homicide is designated as assassination, and is punished with death. Premeditated homicide by administering poisonous substances, is considered the same as assassination and is punished with the same penalty.

Voluntary homicide is considered murder, and is punished with penal servitude for life; but if it is accompanied by bodily torture or other acts of cruelty, or if other crimes or delicts precede, accompany, or follow the same, it is punished with death.

Any one who after having determined, with or without premeditation, to kill a particular person, accidentally or incidentally slays another, incurs the penalty of voluntary homicide.

Section II. treats of voluntarily inflicted blows, wounds, and bodily injuries, (Art. 299-307).

The injuries, if followed by death, entail the penalty of penal servitude for life. If the injuries result in the total loss of sight, hearing, or speech, of both hands or both feet, or one of these members, &c., the penalty of minor confinement is inflicted: in case of less serious maiming or mutilation, major detention for from 2 to 5 years.

In other cases the penalty is graduated according to whether the resultant indisposition or incapacity for labour lasted 20 days or more, or whether the loss of time was less protracted, or finally, whether a merely momentary injury or abuse resulted.—Here also, as in case of the homicide, the perpetrator is held responsible for an *aberratio ictus*.

Whoever, purposely and with criminal intent,

administers to another substances injurious to health, incurs the penalties for premeditated bodily injury, which are in every case to be increased one degree.

The regulation in Art. 308 is peculiar, according to which the penalties in this section are inflicted on anyone who, without intending to compass the death of a third party, deceitfully or maliciously advises any one to undertake a certain act which resulted directly in the death, injury, or sickness of the same.

Section III. treats of legal excuses, and exemptions from the penalties for murder and bodily injury.

An appeal for a " legal excuse " is valid :—

1. If the perpetrator was directly provoked by the gross abuse of the victim, and the act was committed in a transport of rage. The perpetrator however must not have been deserving of the provocation.
2. If, in a fracas, two or more persons shall have inflicted mutual blows and injuries, and it cannot be proved from which side the provocation was first given, all the participators shall have the advantage of the excuse for provocation.
3. If the homicide or violence is committed by a husband on his lawful wife or on her companion in crime, at the very moment that he discovers them in the act of adultery. The limitation of the *Code pénal* " in the house of the married " is excluded. The husband cannot take advantage of this excuse if he previously abetted the dissolute habits of his wife.
4. If the homicide or violence took place in day time while the perpetrator was directly resisting an escalade or a breaking through of fences, walls, or the entrance of an inhabited house or its belongings.

The existence of one of these legal excuses effects a diminution in the penalty of 2 or 3 degrees.

Complete exemption occurs in cases of self-defence against undeserved attack; and this is extended to the protection of one's goods against conflagration, plunder, or robbery, to resistance against theft or the attempt to recover stolen property, and to resistance of escalade, housebreaking, etc., by night. In case of excessive violence in self-defence instead of complete exemption a legal excuse is allowed.

Section IV. contains the penalties for death or bodily injuries resulting from negligence. (Art. 317-319).

Homicide from negligence is punished entirely by a fine (from 20 to 200 *yen*). Injuries of every kind resulting from negligence entail a fine of from 10 to 100 *yen*, considerably diminished (2 to 50 *yen*) if the carelessness results in mere injury to health or temporary incapacity for labour.

Participation in suicide (Section V. Art. 320-321) is punishable (" whoever intentionally instigates another thereto ") and entails, as well suicide of the consenting party (" at his earnest solicitation "), a penalty of minor imprisonment for from 6 months to 3 years and a fine of from 10 to 50 *yen*, which penalty is diminished one degree, in case the participator simply assisted a suicide in the accomplishment of the deed. If the instigator acted from motives of personal interest, the penalty becomes major confinement.

Section VI. (Art. 322-325) treats of illegal arrest and sequestration. In comparison with the *Code pénal* (Art. 341 f.f.) the regulations are comparatively mild. Penalties : Imprisonment from 11 days to 2 months, and fine from 2 to 20 yen, which penalties are raised one degree for every ten days of illegal arrest.

Severer penalties are incurred in cases where deprivation of liberty is accompanied by physical torture, violence, refusal of food &c. &c.—In case such treatment results in indisposition, incapacity for labor, &c,. the penalties for bodily violence &c., are inflicted.

Section VII. (Art. 326-329) contains the penalties for threats of murder, incendiarism, violence, &c. It is worthy of remark that, in all cases of threat, prosecution of the offence occurs only on the complaint of the person threatened or his relatives.

Section VIII. deals with abortion (Art. 330-335). The penalties are comparatively mild as compared with the *Code Pénal* (Art. 317), for the woman herself, who intentionally procures abortion, as well as for any third party who may have produced the same, major imprisonment for from 1 to 6 months, and in case of death the time is increased to from 1 to 3 years, and even to 4 years when threats or artifice were used against the *enceinte* woman. Cases in which abortion is intentionally procured by actual abuse only are punishable by confinement.

Section IX. treats of the abandonment of children, aged, sick or infirm persons in a helpless condition. The penalty is imprisonment of various grades according to the place in which the persons (children under 8) were left to their fate. Disregard of the duty of protection voluntarily undertaken entails increase of penalty one degree. Major confinement and even penal servitude is incurred where, in consequence of abandonment in a helpless condition, permanent bodily injury or death results.

Any one who finds such helpless persons within the limits of his property or in places under his control is bound to take charge of the same and announce the fact to the authorities, failing which he is liable to imprisonment for

from 15 days to 6 months. This is specially so in cases of severe illness.

Section X. treats of the penalties against kidnapping or doing away with children or minors (Arts. 341-345). There is a distinction made between children under 12 years of age and minors over 12 and under 20 years old. Prosecution results only in case of complaint by the injured party, and the penal case ceases in case of the marriage of the guilty party with the person led astray.

Crimes and delicts against good morals are dealt with in Section XI. (Art. 349-354).

Unchaste acts on children of either sex under 12 years, without violence, entail the same penalty as similar acts on adults with violence or threats. Penalty: major imprisonment for from 1 month to 1 year and fine of 2 to 20 *yen*.—If the act were committed on the person of a child under 12 years of age accompanied with force or threats, the comparatively mild penalty of 2 months major imprisonment to 2 years, and a fine of from 4 to 40 *yen*, is inflicted.

Rape committed on the person of a female under 12 years of age entails minor confinement, the same penalty results in case of sexual abuse of a sleeping person, or of one rendered unconscious by the guilty party.

In all cases of violation or rape prosecution takes place only on the complaint of the injured party or of her relatives.

Of course severer penalties are inflicted, even to the extent of penal servitude for life, according to whether the act entailed upon the injured party death, mutilation, or other bodily injuries.

Adultery in case of a lawful wife entails a penalty of imprisonment for from 6 months to 2 years on both the guilty parties. Prosecution takes place only on complaint of the husband, and is null in case he had previously connived at the adulterous act.—Bigamy also entails a penalty (6 months to 2 years and fine of from 5 to 50 *yen*).

The penal regulations in Section XII. (Art. 355-361) against calumny and defamation are very limited. The delict of defamation (without a charge of dishonorable acts or of some definite vice) is only a contravention, and is punishable only is so far as the defamation was made in public.

False charges before Courts of Justice (*Calomnie, dénonciation calomnieuse*) incurs the penalties against perjury.

Public calumny or defamation *(Diffamation)* of a private person with the intention of injuring him, irrespective of all proof of the truth of the statement, is punished, according to the circumstances of the declaration or the circulation of the injurious reports: 1. Major imprisonment for from 11 days to 9 months and fine of from 3 to 30 *yen*, if circulated by means of verbal communication or in public addresses. 2. Major imprisonment for from 15 days to 6 months and fine of from 5 to 50 *yen* if perpetrated by means of publications, the public press, pictorial delineations—sold or posted up, or finally by means of theatrical representations. The crime of defamation of the dead is also punishable.

Under this section come also all those delicts which arise from the abuse of confidential secrets entrusted to physicians, apothecaries, midwives, advocates, attorneys, and religious teachers. All the delicts of this section can be prosecuted only on the complaint of the injured party.

Strange to foreign ideas are the penal regulations of Section XIII. (Art. 362-365) of Crimes and Delicts of *Descendants* against *Ascendants* (ancestors). Homicide of father, mother or other ascendant relative is punished with death. Assistance in case of suicide of such only has the benefit of a mitigation of penalty of 2 degrees. Similar severity of penalty is incurred by descendants who are guilty of violence, abuse, sequestration, threats, desertion, calumny or defamation towards ascendant relatives.

Any one who intentionally refuses one of his ascendant relatives requisite food or things necessary for the preservation of his health incurs a heavy penalty. In none of these cases can the culprit claim the benefit of legal excuses or exemptions from punishment.

Chapter II. contains the Crimes and Delicts against Property.

Section I treats of theft *(de vols clandestins)* of a secret kind (Art. 366-377) in contradistinction to that perpetrated with force or violence *(à force ouverte on commis avec violence)*, (Art. 378-384).

The definition of a theft is that of the *Code Pénal* (Art. 379). The penalty for ordinary theft is major imprisonment for from 2 months to 4 years.

Qualified theft (that committed during a conflagration, an earthquake, a flood, or other calamity, by escalade, house-breaking, or opening of locks) entails a penalty of imprisonment for from 6 months to 5 years. Theft committed by several persons conjointly entails augmentation of one degree in the penalty; if perpetrated in an occupied dwelling house by armed persons the penalty is minor confinement.

The removal of one's own property from the custody of a creditor to whom it had been given as a security is considered theft. Attempt at theft is punishable. All persons convicted of theft are placed under police surveillance. Thefts among domestic relatives are not punishable; only in cases of co-actors (non-related) where the culprit is exempt and the co-actor incurs the usual penalty.

Robbery with violence (under threats or abuse) is punished with minor confinement; under aggravating circumstances, with major confinement; if the violence result in bodily

injury, with penal servitude for life; if it result in death, the penalty is death. Any one who accomplishes a theft by depriving another of consciousness by means of narcotics or other similar substances is held guilty of theft with open force and punished with minor confinement.

Section III. (Art 385-387) treats of Robbery of lost articles by the finder. Refers chiefly to wreckage and lost articles. Penalty 11 days to 3 months and fine of from 2 to 20 *yen*. The same penalty is incurred by the removal of buried or hidden treasure.

Section IV. in only two articles treats of bankruptcy (Art. 388, and 389) a penalty of imprisonment for from 2 months to 4 years is inflicted on anyone who, at the time of bankruptcy or insolvency, shall have concealed a portion of his assets, or shall have exaggerated the amount of his indebtedness. The same penalty, diminished one degree is inflicted on accomplices and assistants.

Imprisonment for from 1 month to 2 years is the penalty for having, at the time of insolvency, made away with, or secreted, mercantile books in whole or in part, or for having, after declaration of failure, paid one creditor to the detriment of others.

Section V. contains the penalties against swindling *(escroquerie)* and abuse of trust. (Arts. 390-398) a person is guilty of swindling (penalty; imprisoment for from 2 months to 4 years and a fine of from 4 to 40 *yen*) who excites in another fears of any imaginary impending danger, or the hope of some chimerical advantage, thereby inducing the same to deliver up to him articles in his possession or documents of any kind whatever; in the same category must be reckoned similar frauds committed by taking advantage of the imbecility or inexperience of insane persons or minors. The penalties for swindling are entailed also by a false description of the quality, weight, number or measure of articles in a transaction of sale or exchange, which may lead to actual deception. In the same category are also the fraudulent sale, exchange or mortgage of property not belonging to the person effecting the transaction, and the deliberate sale of mortgaged property under cover of fraudulent concealment of the mortgage. A person is guilty of embezzlement (*abus de confiance*) (Penalty: major imprisonment for from 1 month to 2 years) who fraudulently appropriates as his own, disposes of to others, or uses for his own benefit, sums of money, bills, or other valuables entrusted to his keeping.—This section deals also with the frustration of a security by the concealment or removal of mortgaged articles.

Section VI. deals with concealment of stolen property (Art. 399-401). The matter of this section is on a level with the latest legislation. Penalty: imprisonment and fine, and subsequent police surveillance. The penalty of the receiver is modified according to the circumstances of the crime which procured the articles. It they were obtained by fraud, the punishment of the receiver is less severe than if they were procured by robbery.

Section VII. refers to incendiarism (Art. 402-410). Intentionally setting fire to an occupied dwellinghouse entails the death penalty; if not occupied, penal servitude for life; if the buildings are not intended for dwellings, major confinement.

Setting fire to barges, ships, railway carriages, which serve for the transport of persons, entails the death penalty.

The burning of one's own buildings, which can no longer be occupied, is also punishable, penalty, major imprisonment for from 2 months to 2 years—Setting fire to buildings by negligence is punishable with a fine.

Section VIII. Of Inundations. (Art. 411-414.) The procuring of an inundation by the destruction of dykes, entails a penalty of penal servitude for life if the jeopardized buildings are occupied or are used as dwellings. If not, the penalty is major confinement; if only cultivated fields, etc. are affected, minor confinement.—The changing of a watercourse by the destruction of a dyke or sluice, when done for another's disadvantage or for one's own benefit entails a penalty of major imprisonment for from 1 month to 2 years and a fine.

We must also mention the penalties of Section IX. (Art. 415-416) against those who intentionally cause shipwreck or foundering of vessels. If one or more persons lose their lives by such deeds, the penalty is death; in other cases penal servitude for life. If there were no persons in the vessel, minor confinement is the penalty. The last Section (X.) of Book II. contains the penalties against the destruction and injury of another's property. (Art. 417-424). There is here a six-fold distinction made in the grade of offence, and the penalty is arranged accordingly.

1. Houses and buildings of another. The destruction or injury of these entails major imprisonment for from 1 month to 5 years, and fine of from 2 to 50 *yen*.
2. Buildings, appurtenances of the above, such as ornaments, fences, pallisades &c., in yards, gardens, fields, &c.
3. Landmarks or boundaries of property.
4. Personal property,—imprisonment for from 1 to 6 months and fine.
5. Horses, oxen and other domestic animals. The first two are protected by severer penalties. In other cases, the penalty is only fine and results from complaint of injured party only.
6. Valuables (bonds &c.) Penalty, 2 months to 4 years and fine of from 3 to 30 *yen*.

Book IV. Contains One Section on Contraventions.

(Art. 425-430)

This section contains only the following noticeable points.

Art. 425. No. 14 inflicts a contravention-penalty of arrest for 3 to 10 days or fine of 1 *yen* 95 *sen* on any one, who makes a false declaration in favour of a person charged with a contravention.

Art. 426. (Arrest for 2 to 5 days or fine of 50 *sen* to *yen* 1.50).

No. 12. "Whoever publicly insults a person." —An ordinary insult is thus made a mere contravention, and is punishable only when publicly perpetrated. The prosecution takes place only on the complaint of the injured party.

Art. 427. (Arrest for 1 to 3 days or fine of 20 *sen* to *yen* 1.25).

No. 9. Physicians, surgeons, midwives, whose assistance has been called in serious cases, and who, without legal excuse, refuse their services.

No. 11. Whoever by lies or false intelligence causes public alarm.

No. 12. "Those who for a consideration declare themselves ready to exorcise misfortune, to procure fortune, to foretell the future, or to fathom secrets."

Art. 428 (1 day's arrest or fine of from 10 *sen* to 1 *yen*),

No. 4. The invitation to play a game of chance, or to buy a lottery ticket on the public street; so also

No. 5. The public presentation of plays or other amusements without the prescribed permission, and the infringement of special regulations relating to the same.

No. 9. Whoever has himself tatooed or follows the business of tatooing.

Art. 429 (5 to 50 *sen* fine).

No. 7. Gymnastic exercises or other similar amusements continued in the public street after one prohibition of the authorities.

No. 11. Loud singing or shouting in a public place under similar circumstances.

No, 12. Sleeping in a public place or making a great noise when drunk.

Those contraventions which are not included in this penal Code, will be punished according to the regulations of local authorities intended for such cases.

CODE OF CRIMINAL PROCEDURE.

Book I.—General Regulations.

Art. 1.—Public action, which aims at the conviction of punishable offences, and the application of legal penalties, is conducted by the officials of the public administration (Ministére public).

Art. 2.—Private action, which aims at a reparation of injuries inflicted upon private persons by penal offences, or the restoration to the same of articles of which they have been illegally deprived, is in the hands of those who are deemed to have been injured, according to the regulations of civil law.

Art. 3.—Public action is independent of that of the injured party, and is not stayed by the abandonment by the same of his complaint or action, excepting in cases provided by the law.

Art. 4.—Private action, for any amount whatever, may be tried before the penal courts, in addition to the public action (accessoirement) excepting in cases provided by the law.—Private action may also be brought separately before the civil court.

Art. 5.—Public and private action must be conducted in a competent court, and according to the mode determined by the law in force.

Art. 6.—If both actions are simultaneously pending before the penal court, or before the penal and the civil court, the private action, on pain of cancellation of both judgements, cannot be first decided. Cancellation is legal when a civil condemnation is followed by a penal condemnation.

Art. 7.—The injured party, who first institutes an action before a civil court, can remove it from the same and bring it before a criminal court only when said court has already admitted a public action on the part of the State Prosecutor.

The injured party, who has instituted an action before a criminal court, can with the consent of the accused, desist from the same and institute proceedings before a civil court.

Art 8.—Suspension of the action, declaration of innocence (l'absolution de l'inculpé), or the acquittal of the accused does not affect the claims of the injured party for reparation of damage, or for restitution to which he is entitled according to the regulations of civil law.

Art. 9.—Public action ceases :—

1. In virtue of the death of the accused.
2. In virtue of the cessation of the private action, or a compromise with the injured party, in all cases where according to the law, public action is made dependent upon private action.
3. In virtue of a final legal judicial decision (décision judiciaire devenue irrevocable).
4. In case of abolition (abolition de la peine) in virtue of a law passed subsequent to the commission of the offence.
5. In virtue of an amnesty.
6. In virtue of prescription.

Art. 10.—Private action ceases :—

1. In virtue of renunciation of the action or compromise with the injured party.
2. In virtue of a valid judicial decision.
3. By prescription.

(1) The regulations regarding prescription of execution of penalties are contained in the Penal Code Art. 58-62.

Art. 11.—Public action[1] suffers prescription:—
1 For contraventions in 6 months.
2 For delicts in 3 years.
3 For crimes in 10 years.

Art. 12.—Private action is prescribed in the same time as public action, even in cases in which the person who should institute proceedings is incapable of doing so, and although proceedings have been begun before a civil court.

If, however, public action has resulted in a conviction, the private action suffers prescription only according to the ordinary regulations of civil law.

Art. 13.—Prescription begins with the day (inclusive) on which the offence was committed, and if continued several days, with the last day of the same.

Art. 14.—Prescription of public or private action against offenders, accomplices (even if unknown), and persons responsible according to civil law, may be interrupted by an act of prosecution on the part of the State prosecutor, by the injured person as party in a civil suit, or by any judicial proceedings, whether in preliminary examination or in the actual suit.

After the interruption a new prescription begins, which, however, can in no case exceed the double of the time indicated in Art. 11.

Art. 15.—The interruption is not valid, if the proceedings of the criminal prosecution, of the preliminary examinations, or of the actual suit, have been formally invalid; this does not include, however, the incompetence of the examining magistrate or of the court entertaining the action.

Art. 16.—In case of discontinuation of the suit, or of acquittal, the accused can demand damages against the prosecutor, the plaintiff, or the civil party, if these have been guilty of bad faith or gross negligence. The same holds good in case of a conviction, when plaintiff, complainant, or civil party, can be shown to have culpably and grossly exaggerated the offence.

If the civil party fail in an appeal against either preliminary examination or against a final sentence, he may, on application of the accused, be made to make special indemnification to the same for any injury incurred by every such appeal.

The application for indemnification by the accused may be made before the criminal court at any time before the passing of final sentence.

Art. 17.—The accused, even if acquitted, can demand indemnification from judge, state prosecutor, officers of court, or judicial police, only in cases where these persons have intentionally done him an injury or have in his case been guilty of some offence provided for in the penal code.

Art. 18-20 Regulate the terms for penal suits. The time fixed is generally peremptory.

Art. 21-25 Treat of delivery of judicial notifications that are obligatory on the Clerk of the Court or his agents.

The regulations are strict, sometimes on pain of invalidation.

Art. 26 Permits changes and additions in documents only under protection of strict formalities, the neglect of which entails invalidation.

Art. 27.—The Regulations of this Code of Criminal Procedure are applicable to offences committed before its promulgation.

Proceedings already begun in legal form are sustained.

Art. 28 Declares the regulations of this Code applicable also to special penal laws to be hereafter enacted.

Art. 29.—The provisions of this Code do not apply to offences punishable by military or maritime law.

Art. 30 Declares that the definition of relationship, given at length in the Penal Code Art. 114 and 115, is also applicable to the Criminal Procedure.

Book II.—Organization and Competence of Criminal Courts.

Chapter I.—General Regulations.

Art. 31.—The ordinary criminal procedure will be undertaken by the same courts and tribunals, that deal with civil justice.

Art. 32.—Seat and jurisdiction are fixed by Imperial decree.

Art. 33.—At every court and tribunal one or more officers of the public administration (State prosecutors) are appointed.

Art. 34.—The functions of the public prosecutor in reference to criminal procedure consist in:—

1. The investigation of punishable acts.
2. Making application to the courts for examination and trial, and the application of the law to offences.
3. The execution of orders and judgments of courts.
4. The defence of the interests of society before the courts.

Art. 35 Requires the uninterrupted attendance of an official of the department of public prosecutor at all sessions of Criminal courts.

Art. 38 Regulates the competence of courts according to the gravity of offences, as follows:—

1. Contraventions are dealt with in police courts.
2. Delicts before correctional tribunals.
3. Crimes are adjudged in Criminal courts.

The higher courts are competent to deal with lesser offences also, when graver ones are dealt with at the same time, even when there is no connection between them.

Art. 39 Gives the definition of connection of offences.

Art 40-43.—Competence as affected by locality:

The judgment of offences committed, in case of doubt *forum praeventionis*. On the whole the principles of modern criminal procedure are followed.

Art. 44.—The same is true of all material connections. The competence of a court over the offender carries with it the competence to deal with all co-actors and accomplices.

Art. 45.—If an offence has been committed in a foreign country, the court of the district in which the offender has been arrested, or where he has been received, when delivered up by the foreign power, is competent to deal with the case.

Art. 46.—A special law regulates the competence of courts to deal with offences committed on board merchant ships.

Art. 47.—On pain of nullifying the decision, a magistrate who has assisted at the preliminary examination is prohibited from participation and judgment in the trial. Members of the higher Courts of Justice are also specially excluded from cases in which they have acted as examining magistrates. They are also excluded from cases of appeal where they have had to do with the decision of the lower court, also on pain of nullifying the proceedings. There are a few exceptions only, particularly in case of an appeal against a judgment for contumacy.

Art. 48.—Every judge before whom a case is brought is to decide as to his own competence.

CHAPTER II.—OF POLICE COURTS.

Art. 49-53.—Justices of the Peace; Competence; Contraventions.

Art. 51.—The functions of public prosecutor are to be performed by a competent police-officer who is under the jurisdiction of the public prosecutor of the higher (correctional) court.

CHAPTER III.—OF CORRECTIONAL TRIBUNALS.

Art. 54-62.—Competence: Judgment of delicts: Conducting of preliminary examinations of charges for delicts and crimes; decision regarding appeals from Police Courts.

The appointment of ordinary judges for correctional courts is made for one year by the president of the higher court. The appointment of examining magistrates is made for one year by the Minister of Justice. In case of necessity supplementary judges for both functions may be appointed; who shall attend both preliminary examinations and the trials, with a *votum consultativum*.

The functions of State prosecutor in correctional tribunals are undertaken by a government official of the higher court, or one of his substitutes.

The duties of the judicial police are performed by the public prosecutor, in conjunction with the Prefects of Tokio, and those of other districts. As assistant officials, in addition to the above and under their direction, there are "commissaries-general" *(Keishi)* and commissaries of police (*Keibu*), sub-prefects, justices of the peace, and district wardens. Their principal functions are in the preliminaries to an action.

CHAPTER IV.—OF COURTS OF APPEAL.

Art. 63-69.—Cases of appeal from police courts are decided by a bench of at least three judges in correctional courts. The functions of the public prosecution are performed by the State prosecutor or one of his substitutes.

All officials of the department of state prosecution, are under the control of the public prosecutor, within the bounds of his jurisdiction.

CHAPTER V.—OF CRIMINAL COURTS.

Art. 70-76.—These decide all criminal cases; they sit once every three months, and consist of a president and four colleagues. The functions of state prosecution are assumed by the public prosecutor or one of his substitutes.

CHAPTER VI.—OF THE COURT OF CASSATION.

Arts. 77-82.—In the Court of Cassation there is a criminal chamber, which decides in all cases:—

1. Of suits for writs of error.
2. Of appeals for re-hearing.
3. Of appeals an account of security or from suspicion of prejudice in the court.
4. Of questions regarding competency.

Its decisions must be made by a bench of at least five judges. The function of State prosecutor in the Court of Cassation are undertaken by an official of its own appointment or one of his substitutes.

CHAPTER VII.—OF THE HIGH COURT.

This is the competent Court for all crimes detailed in Book II., Chapter 1 and 2 of the Penal Code [against the Emperor, and Imperial family, and against the security of the State). It is also competent to deal with all criminal charges against members of the Imperial family and officials of the 1st, 2nd, and 3rd classes (Chokuninkwan) which involve a penalty of imprisonment on the guilty.

The High Court assembles on call of an Imperial decree, resulting from an application of the Minister of Justice, which shall also designate the matters to be adjudicated and the place of session. It consists of a President and six colleagues appointed annually by Imperial decree from members of the Senate and the Court of Cassation (also 2 supplementary judges appointed in the same way).

The functions of the examining justice in this Court of State are fulfilled by one or more members of the Criminal Chamber of the Court of Cassation, chosen for that purpose, the functions of State prosecutor are to be performed by the procureur-general of the Court of Cassation or one of his substitutes.

There is no appeal from the decision of the High Court, excepting in the following three cases:—

1. Appeal againt judgment for contumacy.

2. Complaints regarding points of civil law (requéte civile. See Art. 436).

3. Petition for rehearing (Révision Art. 339).

In these three cases, however, the High Court itself must decide. The process on the whole is similar to the ordinary process.

BOOK III.—OF INQUIRY INTO OFFENCES; OF THE PROSECUTION AND PRELIMINARY EXAMINATIONS OF THE SAME.

CHAPTER I.—OF INQUIRY INTO OFFENCES.

Art. 92.—The State prosecutor is required to investigate all intimations that are sent to him, regarding offences which it is his duty to prosecute, and also to follow up any traces of such acts as may come to his knowledge, so as to bring about the discovery of unknown offenders, &c.

SECTION I.—CHARGES AND DENUNCIATIONS.

Art. 93-99.—Any person aggrieved by a crime or delict may institute a charge for the same before the examining magistrate, the public prosecutor, or any official of the judicial police, of either the place where the deed was committed or where the accused resides. The complainant may appear as civil party.

Art. 96. Describes the official duty of the authorities and officials, in regard to the giving of information concerning offences which come to their knowledge.

Art. 99.—Allows the injured party, who has instituted penal proceedings, the right to withdraw the same at any time; the same right is accorded to the complainant; in this case, however, they are responsible for costs (Art. 16).

SECTION II.

Art. 100-106.—Treats of cases of discovery in the act, and is similar to the French law.

CHAPTER II.—PROSECUTION OF OFFENCES.

SECTION I.—Functions of the State Prosecutor.

Art. 107-109.—The demand for the instituting of a preliminary examination is obligatory in case of a crime, optional in case of a delict, inadmissable in case of a contravention.

The right of complaint by the civil party (Section II. Art. 110-112) is similar to that laid down in the regulations of the French Code.

Chapter III.—(Art. 113-117) regulates the preliminary examination. Excepting in cases of crime or of a "délit flagrant," the examining magistrate cannot, on pain of nullifying proceedings, undertake a preliminary examination without a requisition from the public prosecutor or the civil party.

Section I.—Contains the regulations concerning warrants for summons and arrest. (Art. 118-142).

A warrant for production is allowable only:

1. When the accused has no fixed residence.
2. If the judge suspects him of an intention to flee from justice, or fears he may destroy the proofs of his guilt.
3. If he fears that the accused may carry into execution acts begun or threatened. (Art. 121.)

Connected with the warrant for production is a species of arrest (mandat de dépôt), which, however, is conditioned on a previous hearing of the accused, and in any case is allowable only when the judge is of the opinion that the delict will entail imprisonment or some other severer penalty on the accused. After ten days the warrant for detention (dépôt) becomes a *mandat d'arrêt*. This requires sufficient substantiation of the charge by means of a presentation of a summary of criminating facts, and the letter of the law bearing on the point. Excepting in cases of solitary confinement *(mis au secret)* the accused may, in the presence of an official, receive visits from their relatives, connections, friends or advocate, so long as household regulations are observed. The person confined thus can receive letters, books, and such messages only after they have been read by the examining magistrate.

In every examination prison, a copy of both Criminal Codes must be placed at the disposal of the prisoner (Art. 142).

At any stage of the preliminary examination, the examining judge may, if he considers it necessary for the obtaining of truthful testimony, either on the requisition of the State prosecutor or of his own official right, order that the accused, whether detained or arrested, may be relegated to solitary confinement *(sera mis au secret)*. This "*mis au secret*" means complete isolation from all intercourse with the outer world; the prisoner, without the permission of the examining judge, being unable to receive or send letters, documents, valuables, or any other articles whatever. Food and medical assistance are brought to him only by persons specially designated for that purpose. The "*mis au secret*" cannot be fixed for a longer term than ten successive days, but the order for a term of ten days can from time to time be repeated. Within these ten days there must be at least two hearings of the accused (Art. 145).

Section III. (Art. 146-148) treats of evidence in the preliminary examination, and begins with the principle. The law deduces from the facts given no presumption of guilt whatever.

The confessions of the accused, the results of investigations, the testimony of third parties, the opinions of experts, and evidence of every sort, are left to the free valuation of the judges. The examining judge has to collect suitable testimony for the purpose of finding out the truth regarding the contentions of the parties *(réquisitions* of State prosecutors, *demandes* of the civil party or the accused).

Before any other act of examination, unless there is danger of delay, the judge must give the accused a hearing. (Section IV., Art. 149-157.) The extorting of a confession by threats or false allegations is strictly forbidden. The accused may demand a copy of the report of his examination. Confrontations with other accused persons or witnesses in order to settle questions of

identity or complicity, or to facilitate the ascertaining of the truth, are allowable.

Section V. treats of verifications and seizure of incriminating articles (Art. 158-169). In the first place the duty of the examining judge to procure facts favourable to the accused is particularly insisted upon. For this purpose the dwellings of other persons besides the accused may be subjected to a search, if a reasonable suspicion exists that they contain articles, the possession or the inspection of which would be of importance in the examination. The accused may be personally present at the search of his premises or may be represented by a special attorney. The same holds good for all sorts of investigations into circumstantial evidence. The examining judge has to decide as to the propriety of personal attendance only in case of arrest or detention. The civil party may claim the same right of personal attendance (Art. 163).

Whenever the examining judge considers it important for the establishment of the truth, he may demand from post-office officials, telegraph officials, and other furthering agencies, all telegrams, letters, and other despatches which have been sent either to or from the accused.

Section VI. deals with the hearing of witnesses (Art. 170-190). The examining magistrate issues the necessary summons for witnesses designated by the State prosecutor, the civil party, or the accused. If, however, plaintiff or defendant nominate too many witnesses, the examining magistrate may limit himself to the summoning of five (in correctional cases) or ten (in criminal cases) witnesses, who are first in order of nomination or who seem in his opinion to be the best informed, reserving the right to call a greater number if thought necessary for the establishment of the truth. He may also *ex officio* summon as witness any person other than those designated by the interested parties (Art. 170).—If the witness is a soldier or an officer in the land or sea forces, and at the time absent with his corps, the summons is served on him through his military superior, who shall either give him the necessary permission to appear before the Criminal Court, or in case of absolute hindrance on account of necessary service, shall request the judge to grant necessary delay, giving his reasons for the request.

If a witness refuses (without excuse) to appear after having received a summons, the examining magistrate on the requisition of the State prosecutor has to inflict upon him the penalty of a fine of from 2 to 10 *yen*, from which neither appeal nor protest is allowed. The witness may be summoned repeatedly on pain of a penalty and under threat of having a warrant issued for his production. If the witness still disregards the summons without proper excuse, the fine is doubled and the warrant for production is to be issued.

It is worthy of remark that under general questions the question of the "religion" of the witness is not mooted (Art. 179). The witness swears to "tell the whole truth and nothing but the truth, without hate, fear, or favour." The following persons are not eligible as witness.

1. The civil party.
2. The relatives and connections of the civil party and the accused.
3. Their guardians or their wards.
4. Their servants or employés.

These persons can given information though they cannot act as legal witnesses.

The same holds good for the following persons (that is, they are ineligible as witnesses, but are heard for *renseignment*) :—

1. Persons under 16 years of age.
2. Imbeciles.
3. Deaf mutes.
4. Such as have in consequence of a penal sentence forfeited their civil rights or had them suspended.
5. Such as are charged with crime or are brought before the police court for a delict which entails major imprisonment.
6. Persons who have been charged with the same deed and have undergone the criminal examination, but on account of lack of evidence, have escaped prosecution.

If the witness appears, but refuses, without legal excuse, to give testimony or to take the oath of a witness, on the requisition of the State prosecutor he is to be condemned to the penalty of a fine (4 to 40 *yen*) as laid down in Art. 180 of the Penal Code.

The following are exempt from the fine :—physicians, apothecaries, midwives, advocates, counsel, attorneys, notaries, or ministers of religion of any denomination who refuse to give answer respecting facts—but only respecting those—which they declare that they are bound to conceal as official secrets.—If a witness belongs to the Imperial family or to officials of the 1st, 2nd, or 3rd classes (Chokunin-Kuan) his testimony is taken at his residence.

Section VII. Of Experts. (Art. 191-200.) Experts are summoned when the examining magistrate considers their assistance necessary for the ascertaining of the truth. Art. 192 allows the compulsory summoning of experts, but only on pain of fine, not of warrant of production. The oath of experts promises fulfillment of duty "in all sincerity." If the expert appears, but refuses to take the oath or perform the *expertise* required of him, he incurs the fine laid down in Art. 179 of the Penal Code (from 4 to 40 *yen*).

Persons who cannot be heard as witnesses (Art. 181-182) cannot be summoned as experts. An exception occurs only in case of danger from delay, or the impossibility of immediately obtaining other experts. It this case however the result of the *expertise* and opinion of the

expert will be considered merely as information.

Section VIII gives the regulations concerning the preliminary examination of the so-called *délit flagrant*, (Art. 201-209) in which, following the example of the French law, far-reaching powers are entrusted to the State prosecutor. In these cases the examining magistrate can *ex officio*, *i.e.* without awaiting a requisition from the State prosecutor, prceed with the examination. In such cases, the public action is held to have been begun by the first declaration of the facts of the case; further procedure depends on the requisition of the State prosecutor. On the other hand if the State prosecutor, becomes aware of a *délit flragrant* before the examining magistrate, without awaiting the action of the same, he may repair to the place of the offencc and undertake the various preliminary examinations, after which he shall immediately send a report of the examinations with his requisitions to the examining magistrate. Witnesses and experts are however heard by the State prosecutor without oath. Authority, similar to that of the State prosecutor in these cases, is also given the officials of the judicial police, who cannot however issue warrants of detention or arrest.

Examinations undertaken by the State prosecutor or the officials of the judicial police may be repeated by the examining magistrate. On the other hand the State prosecutor after having heard the accused, whether he has issued a warrant of detention against him or not, may summon him immediately before the bar of the Police Court, if he considers a preliminary examination unnecessary.

Section IX treats of Bail (Art. 210-219). During the course of the preliminary examination, the examining magistrate, after having heard the propositions of the State prosecutor, on the demand of the inculpated person under arrest, may set him at liberty under an engagement to present himself whenever summoned. If the accused is "incapable" (without civil rights), his release on bail may be requested by relatives, connections, or legal representatives. The provisional release is always conditioned on security, the amount of which is to be fixed by the examining magistrate. Security can be furnished by either the accused or a third party, either in cash or through legal representatives who bind themselves to pay. In case of refusal to appear the security may be confiscated in whole or in part. On the requisition of the State prosecutor, the magistrate pronounces sentence of forfeiture of security; on the requisition of the State prosecutor the magistrate may order the return of the forfeited security, if he discontinues the action, refers it to the Police Court, or pronounces a sentence for a delict entailing the penalty of a fine.

The magistrate may also entrust the accused to the care of his relatives and connections in case his release is not requested.

Section X. treats of the closure of the examination (Art. 220-234). If the magistrate judges himself to be incompetent, or the continuation of the examination to be useless, he sends the papers to the State prosecutor requesting his action in the matter, who must send in his requisitions within three days as well as return the papers. The State prosecutor may demand a supplementary examination. In any case the closure of the examination must depend on the judge's decision. If the judge finds that the offence lies beyond his competence, he declares his incompetence. The magistrate decrees the discontinuation of the proceedings, and the release of the accused:—1. If proofs of the offence are insufficient. 2. If the deed proceeded against does not constitute a delict. 3. If the time for prescription has been fulfilled. 4. If a legal sentence has already been pronounced for the same cause. 5. If an amnesty has been granted. 6. If there is cause for absolute exemption from penalty. If the offence be a contravention, the case will be transferred to the Police Court; if a delict, to the correctional police court; if a crime, the magistrate gives his decision to transfer the case to the Criminal Court, which decision carries with it the detention of the accused. If the case be referred to the Criminal Court or to the correctional police court for a delict involving imprisonment, and the accused cannot be found, the State prosecutor or the civil party may demand from the civil court provisional sequestration of his property until he is arrested.

Chapter IV. treats of Appeal in Preliminary Examinations (Art. 234-261). From beginning to end of the examination, the right of protest is accorded to both State prosecutor and the accused: 1. Against a decision of the judge rejecting an objection against his competency. 2. Against the issue of an illegal warrant of arrest, or the non-issue of a legal one. 3. Against the granting or illegal refusing of release on bail. 4. Against any other decision by which he exceeds his powers (excès de pouvoir).—In the last case only the civil party also has the right to appeal. In case of such appeal decision is given in the higher court by a bench of at least three judges.

The code contains special regulations as to legal objections against examining magistrates. Objections are valid in the following cases:—1. Relationship or alliance between the judge or his wife on the one hand and the accused, the civil party, or their wives on the other. 2. Guardianship of the judge over the accused or the civil party. 3. If the judge or his wife has accepted gifts from the accused or his connections, or a proposition regarding such gifts, even when these gifts contain no evidence of being for the purpose of bribery (Art. 237). The objection must first be laid before the magistrate concerned, and will be brought be-

fore the Court only in case of refusal on his part. Every judge is bound, in case of the existence of any of the above causes for objection, to declare his incompetence. An objection against the State prosecutor by the parties to the suit is in admissable.

The State prosecutor has always the right to appeal against a decision of an examining magistrate closing an examination, the Civil party has this right only in case of excess of magisterial powers, and the accused, in this latter case or an account of incompetence of either the judge or the court entertaining the action, if the judge decides that the case must be laid before the Criminal Court or the correctional Police Court. The higher court, acting as a Council-Chamber, must decide such cases of appeal, and the validity of their decision may be called in question by any of the parties concerned. An accused person, who has been released from a prosecution by means of a legal decision of the examining magistrate, cannot be prosecuted again for the same offence even from a new legal stand-point, unless new, and previously unknown, evidence be forthcoming.

Book IV.

Book IV. contains the regulations for the Adjudication of Offences (Du jugement des infractions). Chapter I. presents a number of general principles applicable to the treatment of all kinds of offences (Art. 262-320). First of all publicity is insisted upon on pain of nullifying proceedings. Exceptions are made only in cases where public order demands secrecy, or publicity would offend modesty or good morals. The accused must appear unfettered; he has the right to secure the help of an advocate, whom he may choose from among the lawyers recognized by the Court, or with permission of the Court he may select any other person. If the accused does not appear at the time set for trial, in case the offence be a delict involving imprisonment or severer penalties, the trial may be proceeded with in his absence, only when it is certain that the summons to appear or at least the decision ordering the closure of the preliminary examination, has been put into his hand. The accused if absent, cannot avail himself of the assistance of an advocate.

The President has police control of the sessions, he must take all measures necessary for the maintenance of order. Expressions of applause or disapprobation are punished by immediate expulsion from the audience room; delicts committed during a session are punished *incontinenti* or in the next following session: crimes, however, are remanded to the examining magistrate to deal with according to the regular procedure.

The Court can pass sentence only on those offences with which the accused has been charged. At the same time it can deal with offences connected with the principal charge which first come to light by means of the trial, and may even order a supplementary examination for this purpose.

Protest against the judge in the trial is allowable on the same grounds as in the case of the examining magistrate. Moreover objection against the judge is valid, if he has acted as examining magistrate, or has had to do with the preceding action or decision in another Court. The protest against a judge is admissible at any time before the final decision.—All evidence pro and con admissible in the examination is admissible also at the trial (Act. 283). On the demand of either party the president can order the reading of the reports of the examination relating to the facts of the case, or other cognate documents. All the declarations of the same are accorded the same degree of credibility as the statements of witnesses for and against. The officials of the judicial police, who have taken the minutes, can, either by the parties or *ex officio*, be summoned to act as witnesses; the examining magistrate, only *ex officio* or with permission of the Court, and then only to explain the meaning of minutes taken by himself.—The witnesses heard in the examination can be summoned again, if this cannot be done, or the witness fail to appear, whenever it seems necessary for the explanation of contradictions, the declarations made in the examination may be produced and read in the trial.

Witnesses and accused can be examined only by the president. Colleagues and State prosecutor may ask questions with the permission of the president. The civil party and the accused can demand through the president the asking of such questions as they deem necessary for elucidation.

A witness who has been summoned and without excuse fails to appear, on the requisition of the State prosecutor, may at once in the same session be sentenced to the penalty of a fine of from 50 *sen* to 1 *yen* 95 *sen* in simple police cases, or 2 to 10 *yen* in case of a delict or crime, against which there is no appeal. If he does not appear after receiving a second summons, the fine is doubled, and a warrant for production may be issued against the recalcitrant witness.

After the hearing of evidence has been completed, first the State prosecutor, then the civil party, and finally the accused or his advocate has the right to plead. No one is allowed to interrupt the speaker while pleading his case.

If the State prosecutor abstains from carrying through the public action, the Court is nevertheless obliged to come to some decision in the case.—The persons responsible in civil law can intervene at any state of a case, even during the hearing of an appeal, and on requisition of the civil party may be called into Court.

In case of a condemnatory sentence the reasons for the same must be given both in respect to the facts of the case and the points of law, and the proofs brought forward must be given; the same holds good in case of a sentence staying proceedings.—Sentence of acquittal must state that the charge is not proven, stating the material and legal reasons therefor. The Court passes sentence at the same time on the civil phase of the suit if it deems the matter sufficiently elucidated.

Chapter II. gives the special regulations for the adjudication of contraventions (Art. 321-346). The Police Court entertains an action either when the State prosecutor summons a culprit, or an examining magistrate remands an accused person, or when a higher court sends down a case. The accused may appear by proxy through on attorney, in which case his statement will be allowed only when reduced to writing by himself. If the accused fail to appear, on the requisition of the State prosecutor or the civil party, sentence for contumacy will be passed, against which an appeal may be made within three days. If the offence seems to involve correctional or criminal penalties, the Court must declare its incompetence. An appeal against the decision of a Police Court is admissable before a correctional Police Court, and will be proceeded with according to the forms of a correctional action. All the parties have the right to sue for writ of error against a decision of the correctional Police Court in cases of appeal.

Chapter III.—Of the adjudication of delicts. (Art. 347-371). The Correctional Police Court entertains an action :—

1. When on the requisition of the State prosecutor the accused is directly summoned by the clerk.
2. When a case is remanded to the same, whether by the examining magistrate, the Council-chamber of the Correctional tribunal, or the decision of a higher Court. If the delict in question involves a penalty of only a fine, the accused may be represented by an attorney. The same right of acting through representatives is accorded the civil party and the parties responsible in civil law.

As to the course of the trial itself, there is no appreciable deviation from the modern procedure of the continent (Europe). This is particularly the case with the taking of evidence and the order of pleadings of the parties, where the regulations of the French *Code d'instruction criminelle* are almost exactly followed. In the same way also large discretionary powers are given the court (not the president) "for the establishment of the truth."—The verdict of the correctional tribunal (also similar to the regulations referring to the same matter in the French *Code d'instruction criminelle*) may be contested by an appeal before the court of appeals. In case of appeal, suit for writ of error is admissible.

The adjudication of crimes is attended with somewhat stricter formalities (Chap. IV. Art. 372-409.)

The indictment must contain a full and careful presentation of the facts of the case and all the legal points involved. In other respects it follows closely the decision for remanding the case, and can neither introduce other facts nor accuse other persons than those indicated therein.

Disconnected felonies may be presented in special indictments and separately adjudicated. An advocate will be officially provided for the accused if he has failed to choose one for himself. His presence during the trial is compulsory on pain of invalidating the proceedings. Unconditional freedom of intercourse is allowed between the accused and his advocate from the time of the legal reference of the case (Art. 382). The list of witnesses called by the prosecution must be shown the defendant, and those of the defendant to the State prosecutor. If these announcements are not made within the time legally fixed therefor, the witnesses can be heard only as "persons giving information."—The opening of the session is public but in the absence of the accused. The regular trial begins with a thorough hearing of the accused. In case of contradiction between his statements in court and his previous declarations, the accused is simply asked to explain. After the hearing of all the witnesses, the accused has perfect freedom of reply in explanation. After the conclusion of the taking of evidence the pleadings of the parties follow in regular order (State Prosecutor, Civil Party, accused or his advocate, the persons responsible in civil law).

If new crimes or delicts come to light in the course of the trial, which have no connection with the offences contained in the indictment, and the State prosecutor demand prosecution therefor, the Court is to order one of the members of the Tribunal of the First Instance to proceed with the examination, and then in another andience of the same or following session to adjudicate both offences (the original and the additional).—Suit for writ of error is open to all parties against the verdict of a Criminal Court. A verdict is given in the absence of the defendant only after a thorough examination of all witnesses pro and con, and all forms of erroneous procedure have been guarded against. Suit for writ of error is allowed only to the State prosecutor (excepting in civil matters); the accused has the right to protest (opposition) against a verdict of guilty—and this until the penalty is prescribed—if this is admitted a new trial is proceeded with according to the ordinary formalities of adjudication.

Book V. deals with the Jurisdiction of the Court of Cassation, and Chapter I. of the same

treats of suits for writs of error (Art. 410-438). Chapter II. treats of the revision of penal procedure (Du pouvoir en revision, Art. 439-447), and Chapter III. of contests regarding competence (Des reglements de juges, Art. 449-450). Chapter IV. of reference for reasons of public security or on account of "suspicion légitme" (Art. 451-458).

In the chapter on writs for error the following points are worthy of notice :—Suit for writ of error is admissible against the decisions of examining magistrates and the verdicts of adjudicating courts in the following eleven cases :—

1. If a protest has been rejected in opposition to regulations laid down in the law.
2. If the court has been irregularly constituted.
3. If the judges, who have adjudicated the principal action, or to whom the case has been remanded, were incompetent, or if, on the contrary, competent judges have declared themselves incompetent.
4. If the forms prescribed by the law on pain of nullification have not been observed, or if the prescribed rules in the interest of the defence have not been followed, even when the law does not threaten nullification, provided only that the accused has protested against the illegality.
5. If public action has been wrongly declared admissible or inadmissible.
6. If the State prosecutor has failed to make requisitions where required by the law.
7. If, during the trial, the judge has failed to decide regarding a requisition of one of the parties, or has ruled on points not raised, with the exception of those cases where the law allows the judge *ex officio* to give a decision.
8. If the trial has not taken place in public, when the hearing with closed doors has not been duly ordered, and the decision has not been made public.
9. If no grounds of fact and of law are given for the sentence of the court, or if these grounds contain a contradiction.
10. If there has been an error in the application of the law.
11. If the court has exceeded its powers (excèse de pouvoir Art. 410).

Acquittal or abandonment of the prosecution can never be contested by suits for writs of error, on account of non-observance of prescribed regulations in favour of the defence, or on account of incompetence arising from considerations of the place of the deed.

The civil party, the accused, the persons responsible in civil law can sue for writ of error against a decision regarding a point in civil law in the preliminary or principal hearing, if one of the cases mentioned in Art. 410 occurs. The defendant (in suit for writ of error) can also, in any stage of the proceedings up to the final decision of the Count of Cassation, lodge a counter-appeal. The same right is accorded the State prosecutor in the Court of Cassation.

Appellant and defendant may employ advocates. In criminal cases the condemned, who has not chosen an advocate will be officially provided with one. The president of the Court of Cassation appoints a reporter, the action begins with the reading of the report of the same, whereupon the parties to the appeal are heard pro and con.

If the Court of Cassation finds the appeal valid, the whole judgment is nullified, and as a rule the case is remanded to another Court. If, however, judgment is nullified on account of improper application of the law, or erroneous application of the law relating to the validity of public action, the Court of Cassation itself passes judgment without reference to another Court. If the informalities, whether in the examination or in the adjudication, have had no effect upon the action, the Court of Cassation simply nullifies the same without remanding the case. If the verdict against which appeal is lodged is founded upon a number of offences, and the appeal is merely directed against the procedure or the sentence referring to parts of the charge, it is optional with the Court of Cassation to nullify a part only of the contested verdicts.

The Court to which a case is remanded is bound to maintain the legal ruling of the Court of Cassation which led to the decision of reference. A new appeal is admissible against the verdict of the second adjudication.

The State prosecutor of the Court of Cassation can at any stage of a case, either *ex officio* or on the requisition of the Minister of Justice, lodge an appeal for writ of error for the preservation of the law, this, however, is limited to verdicts and decisions in which acts are punished upon which the law does not inflict a penalty, or are punished with a heavier penalty than the law demands. This suit for reversal, admissible even in case of a legally final verdict, operates practically in favour of the condemned.

Chapter II. treats of revision (Art. 439-447) for which appeals are admissible only in favour of the accused against final verdicts (criminal or correctional). The admissibility of re-hearing goes beyond the well-known cases of the *Code d'instruction criminelle* and the French law of 29 June, 1867.

1. If any one has been condemned for homicide, and sufficient evidence be subsequently found that the person is still alive whose supposed death led to the condemnation.
2. If two or more persons have been condemned for the same offence by

different verdicts, without complicity of the same.

3. If subsequently an *alibi* can be proved in favour of the condemned.
4. If it can be proved that the verdict resulted from perjury, bribery, or any other punishable act whatever of any third party.
5. Or if the verdict was effected by a falsified document (Art. 439).

The requisition for re-hearing in favour of the accused can be made by the State prosecutor or the condemned; after his death by his relatives. The re-hearing can be demanded at any time, even after the infliction of the penalty.

Chapter III. treats of appeals regarding competence which are entertained by the Court of Cassation (Art. 448-450). Five judges of the Court of Cassation acting as Council give the final decision and designate the competent court. The grounds for reference of a case to another jurisdiction (Chapter V. Art. 451-458) may be found in the number or peculiarity of the accused, the excitement of local passion, or other "circonstances graves," so soon as the suspicion seems well founded that disturbance or perversion of justice is likely to arise. The Court of Cassation decides as Council Chamber without necessarily hearing the parties. The suspicion of partiality in the judges may also give rise to reference to another court of the same rank.

The last Book of the Code (VI.) treats of the execution of sentences, rehabilitation, and pardon.—The permission of the Minister of Justice must be obtained before a sentence of death can be executed, all other legal verdicts must be executed immediately after the final decision. Doubts as to the meaning of the verdict and the execution of the same when raised by the condemned must be decided by the Court which passed the sentence in dispute.—Art. 467 and 468 contains essentially a reproduction of forms of procedure of the French *Code d'instruction criminelle* (Chapter VI. Art. 518-520) for the treatment of condemned persons who have escaped and have been re-captured. The same is true of the procedure for rehabilitation. (Art. 470-476, *Code d'instruction*. Art. 619-634.) Petitions for pardon may be presented to the Minister of Justice by the State prosecutor or the principal of a penal institution. The Minister of Justice presents a report with his own opinion to the Emperor. The Minister of Justice can also initiate a petition for pardon. Petition for pardon suspends the execution of no penalty but that of death.

DEPARTMENT OF STATE
MAY 19 1884
RECEIVED

Mr Edwards

No. 1848. United States Legation, Japan.

Tokei, April 26th 1884.

Hon. Bingham

To the Secretary of State.

Subject.

Prince Yamichuna no Miya Sadamaro visits the United States incognito.

No. 1848. United States Legation.

Tokei, Japan, April 26th 1884.

Hon. Frederick T. Frelinghuysen.

Secretary of State.

Washington. D. C.

Sir:

Herewith I have the honor to enclose for your information and in compliance with the request of His Excellency, Mr. Inouye, a copy of a note addressed by the Minister to me under date the 14th instant, wherein he states that His Imperial Highness Prince Yamashina no Miya Sadamaro, attended by his suite will visit the United States, by the outgoing steamer, and that as it is the intention of His Highness to travel incognito, no

formal

formed reception will be expected by His Highness at any place which he may visit.

As I gave to the Prince at his own request a letter of introduction to you I infer that he may desire to wait upon you and upon the President,

I have the honor to be, Sir,

Your obedient servant,

Jno A Bingham

Enclosure,

Mr. Inouye to Mr. Bingham.

dated, April 14th 1884.

Enclosure No. 1. With Mr. Bingham's No. 1848.

Translation

Foreign Office, Tokio,

April 14th 1884.

His Excellency

John A. Bingham

&c &c &c.

Sir:

I have the honor to inform Your Excellency that at the end of this month His Imperial Highness Prince Kamashina no-miya Sadamaro, accompanied by Mr. Hachida Yujiro of H.I.J. Ms Navy, will proceed to England by way of America with a view to attending the Naval School in the former country, and further that as it is His Highness' intention to travel incognito, no formal reception

reception will be expected by
him at any place which he may
visit.

I beg leave to request that Your
Excellency will be pleased to
communicate this to Your Government

Accept, Sir, the renewed
assurance of my highest Consideration

(signed) Inouye Kaoru
Minister for Foreign Affairs

DEPARTMENT OF STATE
MAY
19
1884
RECEIVED

File

Mr Edwards

United States Legation Japan.
Tokei, April 26th 1884.

Mr. Gustavus Goward,
To the Secretary of State.

Subject.

The action of Mr. Goward relative to entering the Corean Service.

Mr Crittenden

United States Legation Japan.
Yokei, April 26th 1884.

Hon. Frederick T. Frelinghuysen.

Secretary of State,

Washington D.C.

Sir:

I have the honor to acknowledge the receipt, by the last mail four days ago, of your instruction of date March 4th 1884, in answer to my communication of December 25th 1883. In this instruction you were pleased to say, "I approve "of your delicacy in not considering "the proposal of the Corean Government "to give you a high and responsible "office and that, although you are "in the service of this government "you are of course at liberty to accept "the proffered trust, should you deem "it to your personal advantage to

"resign

"resign your present position."

Permit me to return my grateful thanks for this expressed approval of my action.

The Representative of the Corean Government here in Tokio, who about the 9th instant returned to Corea, desired to take back with him my decision as to entering the Corean service. At that time I had not received your instruction of March 4th last upon the subject, although I had received an answer to a despatch regarding accounts, sent by the same mail to the Department. In view of the circumstances I naturally came to the conclusion either that my communication had not been received or that it had been considered simply

in

in the nature of information only, and that the Department was pleased to respond to the wishes of the Corean government in some other way"; or that my action possibly might appear to conflict with the request of the King of Chosen regarding appointments forwarded by Minister Foote in November last. Personally I was not anxious to exile myself in barren Corea and do service under a foreign flag. The difficult situation in which I knew my friend, Minister Foote to be placed, surrounded by enemies, rendered it advisable, so it seemed to me, for some one to enter the Corean service and assist him in the extremely difficult task of upholding American interests, now so persistently

and

and actively opposed by other foreign nationalities.

It was in this spirit that I was induced to take the liberty of addressing you as I did in December last. The departure of the Corean Representative obliged me under the circumstances to express my regrets, in that I could not give him a favorable reply. Without the consent and moral support of my government it was inadvisable either for me or the Corean Government that I should enter the Corean service, not to speak of the criticisms which would follow my action. Furthermore I did not desire to appear to be standing in the way as it looked at the time of any possible action of the Department.

Thanking

Thanking the Department for the kind consideration of my communication and the favorable action thereon,

I have the honor to be, Sir,

Your obedient servant,

Gustavus Goward.

DEPARTMENT OF STATE
JUN 12 1884
RECEIVED.

Kierchoff

Mr Edwards
& Mr Kierchoff

United States Legation,

Yokei, Japan 29th April 1884.

Mr. N. Whitney Interpreter

To the Secretary of State

Subject.

Duplicate Salary account for the first quarter 1884.

United States Legation

Tokei. Japan, 29th April 1884.

Hon. Fredk T. Frelinghuysen:

Secretary of State,

Washington D.C.

Sir:

On the Eighth instant I had the honor to enclose with my letter of that date my account, with the necessary voucher, for salary for the first-quarter of the current year. I now beg leave to enclose herewith a duplicate of my said account with the voucher for the same.

I have the honor to be

Sir,

Your obedient servant

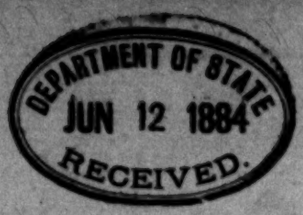
Willis R. Whitney

Interpreter

Enclosure:

Duplicate Statement of Salary and Voucher for same 1st Quarter 1884.

Mr. Burlingame



Mr. Edwards
&
Mr. Kirkhoffer

No. 1849.

United States Legation, Japan
Tokei, May 10th 1884.

Mr. Bingham

To the Secretary of State.

Subject.

Duplicate accounts for salary and contingent expenses first quarter 1884, ending March 31st.

No. 1849. United States Legation

Yokei, Japan, May 10th 1884.

Hon. Frederick T. Frelinghuysen,

Secretary of State,

Washington, D. C.

Sir:

Referring to my No. 1840, of date the 7th ultimo wherein I had the honor to enclose my separate accounts for salary and for contingencies for the first quarter of the current year shewing the balance on account of contingences in my hands to be ($131.16/100) One hundred and thirty one and 16/100 dollars to be accounted for at the close of the second quarter of the current year, I now beg leave to enclose herewith a duplicate of each of said accounts for the

first

first quarter of the current year with the appropriate vouchers therefor and the certificate of the Bankers.

I have the honor to be,

Sir,

Your obedient servant,

Wm. A. Bingham

Enclosures.

Duplicate Salary Account 1st quarter 1884.

" Contingent Expense " " " "

Asiatic

DEPARTMENT OF STATE
JUN 12 1884
RECEIVED.

Mr. Lowell

Mr Edwards

No. 1850.

United States Legation, Japan.
Tokei, May. 10th 1884.

Mr. Bingham
To the Secretary of State,

Subject.
Monthly return for January. 1884. of the foreign trade of the Empire of Japan.

(Return files in Bureau of Stat.)

No. 185 O. United States Legation.

Tokei, Japan. May 10th 1884.

Hon. Frederick T. Frelinghuysen,

Secretary of State,

Washington, D. C.

Sir:

Herewith I beg leave to enclose for your information the "Monthly returns of the foreign trade of the Empire of Japan for the month of January, 1884." from which it appears per table one page 1. that the value of commodities exported during the month was yen 2.431.739.00 and that the value of commodities imported was yen 1.810.882, showing that the exports exceeded the imports in value to the amount of yen 620,856.00. By table four, page 4. it appears that the

the Total value of Specie and Bullion exported within the month was yen 284.865 00, and that the value of the import thereof was yen. 331, 184 00

I have the honor to be,

Sir.

Your obedient servant,

Wm. H. Bingham

Enclosure.

Under separate cover. Monthly return for January, 1884. of the foreign trade of the Empire of Japan

Acknowledged
Copy to Library
June 13/84
Carlisle

DEPARTMENT OF STATE
JUN 12 1884
RECEIVED.

One copy to Library
June 13/84

Mr Edwards

No. 1851.

United States Legation, Japan.

Tokei, May 10th 1884.

Mr. Bingham,

To the Secretary of State,

Subject.

Annual return for 1883 of the foreign trade of the Empire of Japan.

Copied June, 1884.

No. 1851. United States Legation,

Tokei, Japan, 10th May, 1884.

Hon Frederick T. Frelinghuysen,

Secretary of State,

Washington, D. C.

Sir:

Herewith I have the honor to transmit for your information and also for the information of the Honorable Secretary of the Treasury, three several copies of the "Annual return of the foreign trade of the Empire of Japan" for the year 1883.

You will please observe that on page 211. is a comparative table shewing the value of specie and bullion imported into and exported from the open ports of Japan in each year from 1880 to 1883, both inclusive. From this table it appears that the total value of gold exported in 1883. was yen 1.009.570.00 and of

silver

silver yen 2.146.995, making the sum total of exports of gold and silver for 1883, yen 3.156.565.

The same table shews the import of gold for 1883 to have been in value yen 539, and of silver, yen 5.451.501^{00}

The comparative table of commodities exported and imported in 1883, page 211 shews the net total of the former to have been of the value in yen 35.693.523, and of the latter yen 27.973.531^{00}, and the table on page 212, shews that the total import duties for 1883 amounted to yen 1.342.891^{00}.

I have the honor to be,

Sir,

Your obedient servant.

M. C. Rimbara

Enclosure under separate cover.

Three copies of the annual returns of the foreign trade of the Empire of Japan for 1883.

DEPARTMENT OF STATE
JUN 12 1884
RECEIVED.

Mr Edwards

No. 1852.

United States Legation
Yokei, Japan 10th May 1884.

Mr. Brigham

To the Secretary of State

Subject.

Receipt of Instructions Nos.
804 to 811 inclusive.

No. 1852. United States Legation

Tokei, Japan, 10th May 1884,

Hon. Fred'k T. Frelinghuysen

Secretary of State

Washington D.C.

Sir:

I have the honor to acknowledge the receipt of Instructions numbered respectively 804, 805, 806, 807 808, 809, 810 and 811, together with General enclosures therein noted.

I have the honor to be,

Sir,

Your obedient servant,

Jno. A. Bingham

Ack by No 1 file.
All the points presented
by Mr Bingham are
No. 1853 covered by the re-
cent instruction
sent to him.

DEPARTMENT OF STATE
JUN 12 1884
RECEIVED.

Mr Edwards

United States Legation

Tokei, Japan. May 12th 1884.

Mr. Bingham

To the Secretary of State.

Subject.

Telegraphic instruction in regard to Treaty Revision, etc.

No. 1853. United States Legation.

Tokei Japan. 12th May, 1884.

Hon. Frederick T. Frelinghuysen.

Secretary of State.

Washington, D. C.

Sir:

Herewith I beg leave to enclose a copy of a note of date the 6th instant, addressed to me by His Imperial Majesty's Minister for Foreign Affairs, Mr. Inouye wherein the Minister informed me that it is the purpose of his Government to call at the earliest practicable day a final conference of the Foreign Representatives in Tokei to enter upon negotiations for the conclusion of a commercial convention with Japan, and also to come to a definite understanding in regard

to

to the other points of Treaty revision as proposed in the Conference of 1882. The Minister you will please observe requested me to telegraph for authority to participate in the proposed negotiations and conference and to conclude a Commercial convention on behalf of the United States. I had on the 10th instant prepared a telegram, but before it was forwarded I received on the 11th instant your telegram of date the 10th instant in the following words and figures:-

" Washington 10th May 1884.

" Bingham, Minister, Tokio, Japan.

" Authorized to participate new Treaty revision Conference, 30291, 31433, 21366. 16373. 56312, 21166. 56224.

" 47601, 30333, 36738, 15896, 16006,
" 33697, 18763, 17284, 17902, 54426. "
" "Frelinghuysen,"

which I interpret to mean that I am authorized to participate in the new treaty revision conference which is to be convened in this Capital and instructed to follow the German Compromise bases where compatible, and as between [that and other opposing projects] to have respect for Japanese autonomy and that I shall await instructions by mail before binding the United States.

I shall await as directed your written instructions before committing our Government.

Permit me to say that in a

conversation

conversation with the German Minister, Count Doenhoff on the 8th instant he informed me that he was not yet in receipt of his instructions but that he had proposed informally to this Government to conclude a commercial Convention on the bases of the Counter project of 1882. (see Printed Protocols of 1882) to continue say twelve years, and to be subject to revision on conditions similar (as I understood him,) to those contained in Earl Granville's memorandum of the 11th of December last, a copy of which I embodied in my despatch, No 1809. of the 20th of February last, which I had the honor to address to you, save this, that Germany will consent to a conditional favored

nation

nation administrative clause which I understand from Count Doenhoff to mean substantially the same as the like clause in the treaty of Germany, with China, and which in my opinion does not amount to a concession of any value to Japan.

The British Minister has told me in several interviews that no unconditional terminal period will be consented to by Great Britain and also that if any change be made in the proposed tariff schedule of 1882, Great Britain will insist upon additional changes thereof, and that (as I infer) in all other respects Earl Granville's memorandum will be insisted upon.

It

It appears from the present outlook that both Great Britain and Germany will ignore all that our Government has signified a disposition to concede to Japan either in our treaty of 1878, or in your instructions hitherto given me and especially those of your No. 808, of date, the 5th of March last and in the President's Message of the 3d of December last. The Russian Minister is without instructions but if permitted will surely favor somewhat our views. The other European powers seem to be subject to Great Britain's will and pleasure in the premises. I am not without hope in the light of all your instructions that our Government may conclude a Commercial treaty with Japan in the spirit of Concession and justice.

I have the honor to be, Sir,

Your obedient servant,

Wm. A. Bingham

Enclosure.
Mr. Inouye to Mr Bingham
dated. May 6th 1884.

Enclosure No 1 With Mr. Binghams No 1853

Copy

Foreign Office, Tokio,

6th May 1884.

Sir: Referring to our recent interview upon the subject of Treaty Revision, I have now the honor to inform Your Excellency that H. I. M's Government desire to enter, at the earliest practicable moment, upon such negociations as are essential to the conclusion of Commercial Conventions with the Treaty Powers, as well as to a definite understanding with reference to other points embraced in the proposed revision. H. I. M's Government would therefore be pleased to learn that Your Excellency has been empowered to participate

in

in the negociations in question, and to conclude a Commercial Convention, as well as to arrive at such other understanding in the matter of Treaty Revision as may be agreed upon.

As I understand that Your Excellency does not consider yourself authorized, without further instruction from Your Government, to participate in the Final Conference which H. I. M's Government wish to assemble at an early date, I venture to request that Your Excellency will telegraph to your Government to obtain such authority for the purpose indicated as may be requisite.

It is hardly necessary for me to assure Your Excellency that H. I. M's.

H.I. M's, Government will esteem your compliance with this request, and the prompt action of the Government of the United States thereon, as another evidence of that cordial and friendly Spirit which Your Excellency and the Government You so honorably represent have invariably manifested toward the Government of Japan,

I avail myself &c &c

(sgd) Inouye Kaoru

His Excellency
John A. Bingham
&c &c &c

Requisition by Govt. for 13 Articles
Granted June 18 1884
Circular

DEPARTMENT OF STATE
JUN 12 1884
RECEIVED.

No. 854.

Mr Edwards

United States Legation,
Tokei, Japan, 12th May 1884.

Mr. Bingham
To the Secretary of State

Subject-
Application for Flags.

No. 1854. United States Legation,

Tokei, Japan. May 13th 1884.

Hon. Fred'k T. Frelinghuysen,

Secretary of State

Washington D.C.

Sir:

I beg leave respectfully to request- two ~~strong~~ storm flags and one National flag for the use of this Legation.

I have the honor to be,

Sir,

Your obedient servant,

Jno. A. Bingham

Mr Edwards

Add by Mr. to file

DEPARTMENT OF STATE
JUN 12 1884
RECEIVED.

No. 1855.

United States Legation,
Tokei, Japan, 12th May 1884

Mr. Bingham
To the Secretary of State.

Subject.
Extract from "London Saturday Review"
on "Japan's Foreign Relations."

No. 1855. United States Legation

Yokei, Japan 12th May, 1884.

Hon. Fred'k T. Frelinghuysen,

Secretary of State,

Washington D.C.

Sir:

Herewith I beg leave to enclose for your information an extract from the London Saturday Review which was reproduced only to assail it in the "Japan Gazette" of the 30th ultimo. It is a gratification to me to read from this great journal of London such words as these: "there is between "Japan and the European Powers "collectively a perpetual diplomatic "struggle. When the country was opened "thirty years ago, treaties were made

"on

"the phases common to the relations of
"Europe with the Oriental States.
"The main features of these, by which
"all the Treaty Powers are practically
"placed on the same footing, are
"the control by the Treaty-imposing
"Power of the tariff of the Oriental State,
"and the exemption of the Foreign
"subjects, under the system known
"by the name of extra-territoriality,
"from the jurisdiction to native
"judges and magistrates."

This writer states the actual condition growing out of these relations truthfully, and without exaggeration, and shews to my mind conclusively, that the Foreign Powers would be only the gainers in their commercial interests by conceding

to

to Japan all that she has asked
in relation to Tariff autonomy,
the abolition of extra-territoriality,
and general jurisdiction within
her own dominion; giving in return
for this simple act of justice ample
guarantees for the safety of person
and property, and opening to all
foreigners the privileges of her
whole Empire as fully as they are
enjoyed by Japanese, with the
additional concession that all
foreign residents in Japan
shall have absolute exemption
from military duty.

I have the honor to be, Sir,

Your obedient servant,

Wm A Burlingame

Enclosure — Extract from London Saturday
Review — Published in Japan Gazette Apl 30/64.

Enclosure No: 1 with Mr. Bingham's No: 1855.

The Japan Gazette.

YOKOHAMA, APRIL 30TH, 1884.

THE following is an extract from a paper in the *Saturday Review* entitled "Japan's Foreign Relations," commented upon in our article in this issue under the same heading:—

* * * * * *

Though war with a Western State may be out of the question, there is between Japan and the European Power collectively a perpetual deplomatic struggle. When the country was opened thirty years ago treaties were made on the bases common to the relations of Europe with Oriental States. The main features of these, by which all the Treaty Powers are practically placed on the same footing, are the control by the Treaty-imposing Power of the tariff of the Oriental State, and the exemption of foreign subjects, under the system known by the name of extra-territoriality, from the jurisdiction to native judges and magistrates. Such arrangements, not only useful but necessary at the outset of foreign intercourse, and in Mahomedan and some other countries always, are at the present day neither necessary nor useful in Japan. The conditions are widely different; religious intolerance is unknown, and race antipathy, always confined to the official classes, has given place, among them, too, to an earnest desire to cultivate the most friendly relations with the people and Governments of foreign nations. Of the two points at which the existing treaty relations press heavily upon the administration of government in Japan, the inability of an exchequer, sadly deficient in specie returns, to collect an adequate customs revenue, by reason of a tariff arbitrarily fixed by those who had the power to impose their will, is a real and very obvious grievance. The other great trouble is found in the restrictions and precautions placed upon the exercise by the Government of control over the ports set apart for foreign residence, whereby not only foreigners themselves, but frequently also Japanese subjects in their employment, and others, are placed beyond the reach of police measures, and often of law in any shape whatever. The chief practical difficulty lies in this—that foreign offenders being justiciable in their own and not in the territorial courts, its own legislation is for each nationality the sole criterion of an offence. As regards the majority of offences—probably all the class of offences against individuals—our own law is sufficient. But in the case of offences against the State, and against local, police, and municipal regulations, our own law has necessarily no application in Japan; and as our officials dispute the application to foreign residents of Japanese law of any kind, or for any purpose, there is a large class of cases, and those of the kind causing most hindrance to municipal administration, wherein foreign residents are thus amenable to no law whatever. One or two of the foreign ministers, our own included, have a limited power of legislating *ad hoc* in special cases for the governance of their nationals. But this power, or the method of its exercise, has in effect tended only further to confuse the chaotic anarchy existing amidst the conflict of some sixteen or seventeen different jurisdictions. The present condition can be described only as one of deadlock.

But to all their efforts to obtain some amelioration of this state of things the Japanese Government have hitherto received no response but an unargumentative *non possumus*. In the matter of the tariff we have now the authority of the Queen's Speech for believing that some modification of it may be expected to result from the diplomatic conference on the whole subject of Treaty Revision held in Tokio in the spring of 1882. But on the difficult question of jurisdiction there seems less chance of agreement. The fact is, no solution can work that recognises the continuance of the separate jurisdictions. The law of Japan and the administration of justice, remodelled on the lines of Western jurisprudence, may soon be safely allowed to supersede the old troublesome and expensive anomalies of ex-territorial jurisdiction. Formerly it was Japan who refused to open her territory freely to all comers. To-day she offers to open the whole country to foreign residence, trade, and commerce upon precisely the same terms as one European country is open to the subjects of another—nay more, her Government is prepared for a time to give special guarantees ensuring the fulfilment of its own obligations to all dependent on its protection. Our own Government and others hesitate to accept the offer—partly on account of anticipated difficulties in the case of a similar proposal being made by China, a case widely distinguishable, but equally, perhaps, in deference to those who represent the shortsighted views prevalent among the existing communities in the open ports. Whether their interests would suffer or not—and we believe they would be the first gainers—it must not be forgotten that the interests of those small communities are by no means commensurate with those of the British commercial classes generally. Officials long resident abroad are apt to overlook this distinction; and their opinions, therefore, are not always to be so absolutely relied upon as it might at first sight appear they out to be. That the complete opening of Japan to foreign enterprise and capital would be an unmixed advantage to us, and would lead to an enormous increase in the volume of our trade, now insignificant, with that country, cannot admit of question. It lies with our Foreign Office to make or mar the opportunity; where England leads the other Governments will follow. It will be a pity if local prejudices and shortsightedness are allowed, to the detriment of our own national interests to retard indefinitely the progress and development of Japan.

DEPARTMENT OF STATE
JUN 12 1884
RECEIVED.

Mr. Edwards

No. 1856.

War dept. June 13, 1884 Circular

United States Legation

Tokei, Japan, May 13th 1884.

Mr. Bingham

To the Secretary of State

Subject.

Daily Weather Reports of Imperial Meteorological Observatory Tokio for the month of April 1884

No. 1856.

United States Legation

Yokei Japan, May 13th 1884.

Hon. Fred'k T. Frelinghuysen

Secretary of State

Washington D.C.

Sir:

Herewith I have the honor to transmit for the information of the Signal Service the daily weather reports, for the month of April 1884 of the Imperial Meteorological Observatory at Yokei Japan.

I have the honor to be,

Sir,

Your Obedient Servant,

Mc A. Bingham

Enclosure under dispatch seven

Weather Reports for April 1884

Ref'd to the Dept's reports on the German-Chinese treaty clause in the same by mail as mail No 81 of that date. June 16 '84 Cridler

DEPARTMENT OF STATE
JUN 12 1884
RECEIVED.

No. 1857.

Mr Edwards

United States Legation
Tokei, Japan, 13th May 1884.

Mr. Bingham
To the Secretary of State.

Subject.
The proposition of the German
Minister for a Conditional Treaty
Clause with Japan.

No. 1857. United States Legation

Tokei Japan 13th May 1884.

Hon. Fred'k T. Frelinghuysen,

Secretary of State

Washington, D.C.

Sir:

Referring to my No. 1853 dated the 12th inst. in relation to the new Conference to be convened for the revision of Treaties and especially to the German proposition therein mentioned for a Conditional Clause similar to that made by Germany with China, I beg leave to enclose herewith a copy of the Clause or German Concession referred to, as found in Art. I of the Supplementary Convention between Germany and China dated March 31st 1880, in which you will please observe

observe it is stipulated that in case special regulations for the execution of concessions ~~—~~ + may be made by the Chinese Government to foreign Governments, Germany may claim for herself and subjects, such concessions, and shall assent to the regulations for the execution thereof; but Art. XL (40) of the Treaty of Sept. 2nd 1861 is not affected by this Regulation and is hereby expressly confirmed.

This Art. XL. (40) of the Treaty of 1861, it is to be noted, provides that the German States and their Subjects shall fully and equally participate in all privileges, immunities and advantages which have been or may be granted by China

to

to the Government or subjects of any other nation. I fail to find in the proposition of the German Minister referred to in my said No. 1853 any substantial Concession whatever to Japan.

I have the honor to be

Sir,

Your obedient servant

Wm. A. Pinghem

Enclosure.

Extract from Supplementary Treaty between Germany & China of 31st March 1880.

Enclosure No. 1 With Mr. Binghams D.: 1857.

Extract from "Supplementary
"Conventions between Germany and China"

Dated 31st March 1880. (See Chronicle and Directory for China & Japan - Treaties &c - page 214 Part II. 1883)

xxx.

"German Concession. In the event
"of special regulations for the execution
"of concessions which the Chinese Govern-
"ment may make to foreign
"Governments being attached to such
"concessions, Germany, while claiming
"these concessions for herself and
"for her subjects, will equally
"assent to the regulations attached
"to them.

"Art. XL of the Treaty of the 2nd of
"September, 1861, is not affected by
"this regulation, and is hereby
"expressly confirmed.

"Should

"Should German subjects, on the
"strength of this article, claim
"privileges, immunities, or advantages
"which the Chinese Government
"may further concede to another
"Power, or the subjects of such
"Power, they will also submit to
"the regulations which have been
"agreed upon in connection with
"such concession".

DEPARTMENT OF STATE
JUN 12 1884
RECEIVED.

Mr Edwards

No. 1858.

United States Legation

Tokei, Japan, 13th May 1884.

Mr. Brigham

To the Secretary of State

Subject

Treaty of peace between France and China - concluded May 11th 1884. -
regarding the Tonquin question.

No. 1858. United States Legation

Tokei, Japan 13th May 1884.

Hon. Fred'k T. Frelinghuysen

Secretary of State

Washington D.C.

Sir:

I have just been furnished by Mr. Inouye with a copy of a telegram this day received by him from the Japanese Consul at Tientsin, Mr. Hara dated yesterday (a copy of which is enclosed) wherein it is stated, upon the authority of the French Consul at Tientsin, that the the French Commodore Fournier, by instruction of his Government, had concluded a Treaty of peace with China on the Tonquin question, to the effect that France is to have full right-

right to establish Commerce in Annam, Kwanton, Kwansi, and to hold the Whole of Tonquin; China surrendering all claim thereto, and also to withdraw all Chinese Soldiers therefrom; the French Government to make no claim on China for indemnity

I have the honor to be,

Sir,

Your obedient servant

Mc A Singhum

Enclosure:

Copy of telegram from H. B. M's Consul Hara to H.E. Imp. Inouye dated Tientsin May 12th 1884.

Enclosure ÷ No 1. With Mr. Bingham's No 1858.

Telegram —Copy—

To Monye-

French Consul informed me that the Government of France sent telegraphic instruction to Commodore Fournier to make treaty of peace with Chinese Government regarding the Tonquin question. The following concluded and signed by Li Hung Chang and Fournier yesterday at Li's residence ÷ 1 French Government to have the full right to establish commerce in Lenan, Kwanton, Kwansi. 2. Chinese Government to yield the whole Tonquin to France and give up all her responsibility in future. 3. French Government not to ask any indemnity 4.

Chinese

Chinese Soldiers to evacuate
Tonquin.

(Sgd) Hara

Tientsin May 12th/84.

DEPARTMENT OF STATE
JUN 12 1884
RECEIVED.

Mr Edwards

Sent to New Orleans
No. 1859

Copy to Senate Committee June 13/1884

Copy to Treasury Committee June 13/1884

United States Legation

Tokei, Japan, 13th May 1884.

Mr. Bingham

To the Secretary of State

Subject-

Japan will take part in the World's Industrial and Cotton Exposition at New Orleans

No 1859. United States Legation,

Tokei, Japan 13th May 1884.

Hon. Fredk T. Frelinghuysen,

Secretary of State

Washington D.C.

Sir:

It gives me pleasure to enclose herewith a copy of a letter of current date from Mr. Inouye, His Imperial Majesty's Minister for Foreign Affairs, wherein the Minister acquaints me that His Imperial Japanese Majesty's Government has decided to participate and be represented in the proposed World's Industrial and Cotton Centennial Exposition, to be held at the City of New Orleans, in the State of Louisianna, in December next-

I

I have the honor to be

Sir

Your obedient servant

Wm A Bingham

Enclosure-

Mr. Inouye to Mr Bingham

of date 13th May 1884.

Enclosure No. 1 With Mr. Bingham's No. 1859

Translation —Copy—

No. 18. Foreign Office Tokio

13th May 1884.

His Excellency

John A. Bingham

&c &c &c

Sir:

I have the honor to acknowledge the receipt of Your Excellency's note bearing date of the 20th November of last year, informing me that You have been instructed by Your Government to convey to the Japanese Government an invitation to be represented at and take part in a World's Industrial and Cotton Centennial Exposition to be held at the City of New Orleans

in

in the State of Louisiana in December of this year.

The information contained in Your Excellency's note has been communicated to the proper Authorities, and I now hasten to acquaint Your Excellency that our Government has decided to participate in the proposed interesting Exposition, and beg leave to request that Your Excellency will be good enough to communicate this to the U. Government of the United States.

I avail myself of this occasion to renew to Your Excellency the assurance of my highest consideration

(Sgd) Inouye Kaoru

H.I.J. Min. Minister for Foreign Affairs

Archives T[illegible]

DEPARTMENT OF STATE
JUN 12 1884
RECEIVED.

dr Edwards

No. 1860.

United States Legation

Tokei, Japan, 14th May 1884.

Mr. Bingham

To the Secretary of State

Subject-

Appointment of Mr. Kuki to be

E. E. and M. P. to the United States.

No. 1860.

United States Legation

Yokei, Japan, 14 May 1884.

Hon. Fred'k T. Frelinghuysen,

Secretary of State

Washington, D. C.

Sir:

Herewith I beg leave to enclose a copy of a note of current date addressed to me by His Excellency Mr. Inouye in which he acquaints me that Mr. Kuki Rinichi for years past assistant vice Minister of the Department of Education, has been appointed to be His Imperial Japanese Majesty's Envoy Extraordinary and Minister Plenipotentiary to the United States, and requests me to communicate the appointment to our Government. I take pleasure in saying that

Mr.

Mr. Kuki is a gentleman of high character.

I have the honor to be,
Sir;
Your obedient servant
M. A. Bingham

Enclosure:-
Mr. Inouye to Mr. Bingham
May 14th 1884.

Enclosure No. 1. With Mr. Bingham's No. 1860.

Translation — Copy.

No. 19. Foreign Office, Tokei,

Tokei, Japan, 14th May 1884.

H. E. John A. Bingham

&c &c &c.

Sir:

Referring to the communication which I had the honor to address to Your Excellency on the 8th instant, with reference to the appointment of Mr. Terashima Munenori, H. J. M's Envoy Extraordinary and Minister Plenipotentiary to the United States, to be "Shussi of the Imperial Household, I have now the honor to inform Your Excellency that Mr. Kuki Rinchi, Assistant Vice Minister of the Department of Education, has

has been appointed to be H.I. Mis
Envoy Extraordinary and Minister
Plenipotentiary to the United States
and I beg to request that Your
Excellency will communicate the
said appointment to Your Governme

I avail myself of this occasion
to renew to Your Excellency the
assurance of my highest consider-
ation -

(Sgd) Inouye Kaoru
H.I.J.M's Minister for
Foreign Affairs

DEPARTMENT OF STATE
JUN 23 1884
RECEIVED.

Mr Edwards
&
Mr Keckhoffer

United States Legation Japan.
Tokei. May 16th 1884.

Mr. Howard

To the Secretary of State

Subject.

Enclosing duplicate Statement of account for salary for the quarter ending March 31st 1884.

United States Legation Japan.

Tokei[illegible] 16th 1884.

Hon. Frederick T. [illegible]inghuysen.

Secretary of State,

[illegible]hington, D. C.

Sir:

I have the [illegible]r to enclose herewith.

duplicate stat[illegible] of my account for

salary [illegible]ding March

31st 18[illegible] change vouchers.

[illegible]be.

Sir,

Your obedient servant

Gustavus Goward

Enclosure as above.

United States Legation Japan.

Tokei May 16th 1884.

Hon. Frederick T. Frelinghuysen

Secretary of State,

Washington, D. C.

Sir:

I have the honor to enclose herewith duplicate statement of my account for salary for the quarter ending March 31st 1884, together with exchange voucher.

I have the honor to be,

Sir,

Your obedient servant

Chrstavus Goward

Enclosure as above.

DEPARTMENT OF STATE
JUN 23 1884
RECEIVED.

Mr Edwards

No. 1861.

Note to Mr. Bingham
by C.C. June 24
Cipher

United States Legation

Tokei, Japan 27th May 1884.

Mr. Bingham,

To the Secretary of State

Subject.

Receipt of Instructions

No. 1861. United States Legation

Tokei Japan 24th May 1884.

Hon. Fred'k T. Frelinghuysen,

Secretary of State.

Washington D.C.

Sir:

I have the honor to acknowledge the receipt of Instructions numbered respectively 812, 813. [it is supposed this was intended to be No 813] also 814.

I have the honor to be

Sir,

Your obedient servant

Jno A Bingham

Japan
No 1

DEPARTMENT OF STATE
JUN 23 1884
RECEIVED.

Copy to Treasury. Mr Edwards

No. 1862. Copy to Secy. of Navy 24 ult. Circular.

United States Legation
Tokei Japan 27th May 1884.

Mr. Bingham

To the Secretary of State

Subject.

Monthly Return of the Foreign Trade of the Empire of Japan. Febry 1884.

(Report filed)

No. 1862. United States Legation.

Yokei, Japan, 27th May 1884.

Hon. Fred'k T. Frelinghuysen

Secretary of State

Washington, D.C.

Sir:

I beg leave to enclose for your information and that of the Honorable Secretary of the Treasury the "Monthly returns of the foreign trade of the Empire of Japan" for February 1884. Table I shews that the total value of Commodities exported in Feby last was Yen 2,268,725 99/100, and that the total value of the imports thereof within the month was Yen 1,850,801 23/100 the exports being in excess of the imports to the value in Yen 417,924 76/100

The tables on page 5 shew that the total

total value of Specie and bullion exported in the said month amounted to Yen 691,269, and that the total value of the import thereof was Yen 146,213.00

I have the honor to be,

Sir,

Your obedient servant,

H. A. Burghuis

Enclosure: Separate Cover.

Triplicate, "Monthly Returns of the Foreign Trade of Japan" - Feby, 1884.

DEPARTMENT OF STATE
JUN 23 1884
RECEIVED.

No. 1863. June 24

Copy to Mr Arthur, as No 6 June 24. 84 Cir'r

Mr Edwards

United States Legation

Tokei, Japan, 27th May, 1884.

Mr. Bingham

To the Secretary of State.

Subject;

The appointment of Japanese Commissioners to the New Orleans Cotton Exposition

No. 1863. United States Legation

Tokei, Japan, 24th May 1884.

Hon. Fred'k T. Frelinghuysen

Secretary of State

Washington, D.C.

Sir:

Referring to my No. 1859 wherein I had the honor to acquaint you of the intention of His Imperial Majesty's Government to be represented and to participate in the World's Industrial and Cotton Exposition at New Orleans in December next, I now take pleasure in transmitting herewith a copy of a note from His Excellency Mr. Inouye informing me of the appointment of Mr. Takamine Jonkichi, Secretary Agricultural and Commercial Department and Mr. Tamari Kizon Assistant

Professor

Professor of the Imperial Agricultural College in Komaba to be Commissioners on behalf of Japan to the proposed Exposition

I have the honor to be

Sir,

Your obedient servant,

M. A. Bingham

Enclosure:

Mr. Inouye to Mr. Bingham

May 26th 1884.

Enclosure No 1 with Mr. Bingham's No 163.

Translation Copy

No 20. Foreign Office, Tokio

May 26th 1884.

His Excellency

John A. Bingham

Envoy Extraordinary and Minister

Plenipotentiary of the U. S. A.

Sir:

Referring to my note of the 13th instant in which I had the honor to inform Your Excellency of our Government's decision to participate in a World's Industrial and Cotton Centennial Exposition to be held at New Orleans in the State of Louisiana in December of this year, I now beg leave to acquaint Your Excellency that the Officers named in the

accompanying

accompanying list have been appointed as our commissioners to be despatched to the proposed Exposition.

I avail myself of this occasion to renew to Your Excellency the assurance of my highest Consideration.

(Sgd) Inouye Kaoru

H. I. J. M's Minister for Foreign Affairs.

Enclosure. Translation

Japanese Commissioners

Takamine Jokichi

Sōnin Goyo-gakari (Secretaire adjoint) in the Agricultural and Commercial Department.

Tamari Kizon

Assistant Professor of the Imperial Agricultural College in Komaba (Tokio)

Ack by no file

DEPARTMENT OF STATE
JUN 23 1884
RECEIVED.

W. Edwards

No. 1864.

United States Legation Japan.

Tokei. May 27th, 1884.

Mr. Bingham

To the Secretary of State,

Subject.

German instructions on treaty revision as communicated by telegram to the Japanese Government by its Minister in Berlin.

Confidential.

No. 1864. United States Legation,

Tokei, Japan, May 27th 1884.

Hon. Frederick T. Frelinghuysen,

Secretary of State,

Washington, D. C.

Sir:

Referring to my No. 1857, in relation to the German proposition for the revision of treaties with Japan, I now beg leave to enclose for your information a copy of a telegram confidentially furnished to me by the Minister for Foreign Affairs which I received on the 20th instant, and which purports to be from Mr. Hanabusa, the Japanese Minister in Russia but which is in fact, as I am informed from Mr. Awoki, His Imperial Japanese Majesty's Minister in Berlin. This telegram is not in my opinion altogether

in

in accord with the representations heretofore made to me by Count von Doenhoff, the German Minister, and which I had the honor to communicate to you in my No. 1853, of date the 12th instant.

By Art. I. of this telegram Japan may denounce her treaties after eight years on condition that the Empire shall be opened by a Japanese law, which will settle all judicial subjects according to previous understanding with the Foreign Powers.

It does seem to me that this places Japan in no better condition than she is at present, and is substantially the project of Great Britain save as to the time when the Empire shall be opened. How can Japan, it may be enquired open the country under Japanese

law

law which will settle all judicial subjects according to a previous understanding with the Foreign Powers when that understanding remains itself unsettled.

By Art. III. the tariff as proposed is to remain unaltered, and by the IV.th Art. foreign vessels to be chartered as proposed but all foreigners on board the chartered vessels to be under Consular jurisdiction.

Articles marked B. in the telegram needs some explanation as to what is meant by applying administrative laws to foreigners who under extension of the present passport system travel in the interior "but not for commercial purposes".

Article marked C. indicates that

at

at any time in the future Germany is to take part in any Conference when the new regulation laws which Japan may wish in regard to judicial matters will be considered.

In short Germany like Great Britain manifestly intends that Japan shall only have treaty revision, now or hereafter by conference and agreement among all the Foreign Powers.

As this has not been the accepted policy of our government in the past, I hope it may not be our accepted policy in the future.

I have the honor to be, Sir,

Your obedient servant,

Wm. A. Wheeler

Enclosure to Mr. Bingham's No. 1864.

Copy of Confidential telegram.

Inouye.

Gaimusho, Tokio.

From Aoki,

According to written instructions Doenhoff and Zappe are authorized:

A. To conclude Commercial Convention inclusive Tariff and other Commercial and Navigation matters.

I. Our right of denouncing depends on condition that the Empire should be opened after 8 years by a Japanese Law, which will settle all judicial subjects according to previous understanding with Foreign Powers. German Government will avoid in this way English proposal of 3 years probational period

II

II. As to the favored nation clause Germany holds its intermediatory proposal.

III. Acceptance of tariff, if possible unaltered.

IV. Requirement of charter of foreign vessels for coasting trade according to your proposal, but under Consular jurisdiction as to foreigners on board ships.

B. To agree to an arrangement that Japanese administrative laws will be applied to foreigners, on account of granting them extended communi-cation, namely, extension of passport system, but expressly not for commercial purposes. The severity of punishment and fine in this regard should however, be commensurate

to

to 3 months imprisonment or ¥500.

6. To take part in any Conference or negotiation at any time henceforth when the new regulation of judicial matters according to Japanese wishes should be discussed in order to further our mutual interests; that is, the Empire should be opened under recognition of the territorial jurisdiction.

Hoping all these may meet your wishes I inform you that the English Minister is not so anxious bound as you think of his instructions, which I have read.

Hanabusa

April 28th

Dispatches from Consuls in Japan

Desp. to June 16. 84 Cir. Ltr

DEPARTMENT OF STATE
JUN 23 1884
RECEIVED.

Mr Edwards

No. 1865.

United States Legation

Tokei, Japan May 29th 1884

Mr. Bingham

To the Secretary of State

Subject.

Daily Weather Reports of the Imperial Observatory at Tokio for May 1884.

No. 1865. United States Legation

Tokei, Japan May 29th 1884.

Hon. Frederick T. Frelinghuysen

Secretary of State,

Washington D.C.

Sir:

Herewith I have the honor to transmit for the information of the Signal Service the daily weather reports, for the Month of May 1884 of the Imperial Meteorological Observatory at Tokio Japan.

I have the honor to be,

Sir,

Your obedient servant

Jno. A. Bingham

Enclosure - Separate cover.

Daily weather reports for May 1884.

Mr Edwards

No. 1866.

United States Legation

Tokei, Japan 6th June 1884.

Mr. Bingham

To the Secretary of State

Subject-

Receipt of Instructions

No. 1866. United States Legation

Tokei, Japan, 6th June 1884.

Hon. Frederick T. Frelinghuysen,

Secretary of State

Washington D.C.

Sir:

I have the honor to acknowledge the receipt of Instructions numbered respectively 815, 816 and 817, also the receipt of your Circular Instruction dated the 22nd of April 1884 enclosing Notification from the International Association of the Congo.

I have the honor to be,

Sir,

Your obedient servant

Jno. A Bingham

DEPARTMENT OF STATE
JUL 1 1884
RECEIVED.

W. H. Edwards

No. 1867.

United States Legation

Tokei, Japan, 6th June 1884.

Mr. Bingham

To the Secretary of State

Subject.

The North German Gazette on the recognition by the U.S. Government of the International Association of the Congo.

No. 1867. United States Legation

Tokei, Japan 6th June 1884.

Hon. Frederick T. Frelinghuysen,

Secretary of State

Washington D.C.

Sir:

Referring to your Circular Instruction announcing the sympathy of the Government of the United States with, and approval of the humane and benevolent purposes of the International Association of the Congo administering the interests of the Free States there established, and also announcing that our Government will order the officers of the United States, both on land and sea, to recognize the flag of the International Association, as the flag

of

of a friendly Government, I beg leave to note, for your information, that on yesterday, the 5th instant, there appeared in the Japan Daily Mail, at Yokohama, the following paragraph, dated Berlin May 6th: "The North German Gazette, commenting upon the "recognition by the United States of "the African Association of the Congo, "asks, 'Who, and what is this Association? "Its Statutes are not published, and it "is not even known whether it possesses "any corporate rights. Who is the "Association in the eyes of the law? "From whom has it acquired its rights.'" This article, I have no doubt, but reflects the views of the German Government, and is but another witness of the purpose of that Government to co-operate with the

the Government of Great Britain, and other European governments, in questioning the right of the United States to either recognize, or negociate with, any foreign State, especially in Asia or Africa, without the Consent of Great Britain and her allies, and subject to their dictation.

Our Government is to be congratulated upon its declared policy to avoid all Entangling alliances with foreign Powers, and to assert its unquestionable authority to recognize free States in whatever quarter of the globe they may be, and also to treat and deal justly with all nations.

I have the honor to be Sir,

Your obedient servant,

Jno. A. Bingham

Ack by No 4
Letter to file

W Edwards

No. 1868.

United States Legation
Tokei, Japan, June 6th 1884.

Mr. Bingham

To the Secretary of State.

Subject:

The Marquis of Salisbury on "hostile tariffs" in uncivilized countries, and the importance of preventing Foreign Powers from introducing them into Japan &c.

No. 1868. United States Legation

Yokei, Japan, 6th June 1884.

Hon. Frederick T. Frelinghuysen

Secretary of State

Washington D.C.

Sir.

I beg leave to enclose for your information a slip cut from the Japan Daily Mail of the 5th inst. containing an extract from the speech of the Marquis of Salisbury delivered at Birmingham on the 16th of April last.

The Marquis you will observe speaks of the industry of Birmingham as being cramped and fettered by the hostile tariffs which shut the English out from the civilized markets of the world, that the uncivilized markets were becoming more precious to English

Manufacturers

Manufacturers, and are likely to be the only fields which will offer to them a profitable business, and that these uncivilized markets will be thrown open to the English, if only, no foreign Power is allowed to come in and introduce its "hostile tariffs" between you (the English) and the benefits of the uncivilized markets.

It would seem that the Marquis agrees with Earl Granville that Japan is an uncivilized country and should not be allowed to control its tariff — autonomy and that the honorable gentleman is of opinion that no foreign power should be allowed by Her Britannic Majesty's Government to consent by treaty provision that Japan should make a "hostile tariff" or impose any

any restrictions upon British trade in this Empire.

All this but confirms me in the opinion heretofore expressed in my dispatches to the Department that it is highly important that the United States should secure the Markets of Japan for our surplus productions by concluding a revision of our treaties without awaiting Englands pleasure or asking her co-operation

I have the honor to be,

Sir,

Your obedient servant,

Wm. A. Burlingame

Enclosure - Extract from the Japan Daily Mail. June 5th 1884.

Enclosure No 1 with Mr. Bingham's No 1868.

The Japan Daily Mail.

YOKOHAMA, THURSDAY, JUNE 5, 1884.

THE Marquis of Salisbury, speaking at Birmingham on the 16th of April, said:—"You know how the industry of this town is being cramped and fettered and confused by the growing wall of hostile tariffs which shuts you out of most of the markets of the world.—(Hear, hear, and cheers.)—I will not now discuss how far it may be possible for diplomacy to relieve you of that confinement. I fear that most of the advantages which we might have offered to the other nations of the world in return for more favourable tariffs have been thrown away by the want of foresight of former legislators. I doubt if that evil can be retraced. At all events you must consider this—that if you are being shut out by tariffs from the civilized markets of the world, the uncivilized markets are becoming more and more precious to you. They threaten to be the only fields which will offer to you a profitable business. At all events they are fields which will offer the most profitable business, and as civilization goes on and exploration increases these uncivilized markets will be thrown open to you, if only no foreign Power is allowed to come in and introduce its hostile tariffs between you and the benefit for which you look.—(Hear, hear.)—The effect of the policy of the Government has been in place after place to allow these markets to be stolen away from you, and you know that in the Congo a treaty has been made which will have the effect of putting a highly protective and prohibitory power between your industry and the consumption of the native population of Africa. The same thing is the case with Madagascar. The French are being allowed to surround it, to make claims upon the sea coast, which will enable them to set up their exclusive and prohibitory tariff and to shut you out from those markets."

DEPARTMENT OF STATE
JUL 1 1884
RECEIVED.

Mr Edwards

No. 1869.

United States Legation
Yokei, Japan, 6th June 1884.

Mr. Bingham

To the Secretary of State.

Subject.

Information concerning the preparation of Ginseng roots for market will be forwarded as soon as possible.

No. 1869. United States Legation

Yokei, Japan, 6th June 1884.

Hon. Frederick T. Frelinghuysen

Secretary of State

Washington D.C.

Sir:

Referring to your No 817 of date the 6th ultimo, enclosing Mr. McKinney's letter for further information concerning the preparation of ginseng roots for market, I beg leave to say, that the desired information will be sought for, and as soon as obtained, will be forwarded.

I have the honor to be,

Sir,

Your obedient servant,

Wm. A Burlingame

DEPARTMENT OF STATE
JUL 1 1884
RECEIVED.

Mr Edwards

No. 184. July 3 1884

United States Legation
Yokei. Japan. June 6th 1884.

Mr. Bingham

To the Secretary of State.

Subject.

Medal of the "Red Ribbon" conferred upon Captain D.O. Davis of American Merchantship Ella S. Thayer for rescuing a Japanese crew at sea.

No. 1870. United States Legation

Yokei, Japan 6th June 1884.

Hon. Frederick T. Frelinghuysen,

Secretary of State,

Washington D.C.

Sir:

It gives me pleasure to enclose herewith a copy of a communication from His Imperial Japanese Majesty's Minister for Foreign Affairs, Mr. Inouye, dated the 28th of May last, acquainting me of the rescue from peril at sea of the crew of a Japanese vessel, wrecked off the coast of Kunshiu, by D.O. Davis, Captain of the American merchantman Ella S. Thayer, and, adding, that for this humane action by which the lives

lives of the crew were saved, His Majesty, the Emperor of Japan, has been pleased to confer upon Captain Davis the medal of the "Red Ribbon", which will be delivered to that gentleman through His Majesty's Minister to the United States.

I have the honor to be,

Sir,

Your obedient servant,

Jno A Bingham

Enclosure - Mr. Inouye to Mr. Bingham of May 28th 1884.

Enclosure No. 1 with Mr. Binghams No. 1870.

Translation Copy

No. 21. Foreign Office, Tokei,

May 28th 1884.

His Excellency

John A. Bingham

&c &c &c

Sir:

I have the honor to inform Your Excellency, that the Kenrei of Kanagawa has reported to me that a Japanese subject- Okada Tokuzo and twelve others of Okazakimura, Itano district Tokushima Ken, all being members of the crew of a vessel belonging to Amahane Kioji of Minamihama-mura in the same district were shipwrecked off the coast of Kunshiu, on

on the 7th February of last year, and, while their vessel was helplessly drifting, were fortunately rescued on the 19th of the same month, and taken to Yokohama by Mr. D.O. Davis Captain of an American sailing vessel, the "Ella S. Thayer"

As it is no doubt owing to the humane action rendered by that gentleman that their lives were saved, I at once submitted to His Majesty the Emperor the particulars of the case, and I now have the pleasure of acquainting Your Excellency, that His Majesty has been pleased to confer upon the gentleman the medal of the "Red Ribbon", and further that the said medal and diploma will be delivered to him through H.I.M's

Minister

Minister in the United States
of America.

I avail myself of this occasion
to renew to Your Excellency the
assurance of my highest consideration.

(Sgd) Inouye Kaoru

H.I.J.M's Minister for
Foreign Affairs.

DEPARTMENT OF STATE
JUL 1 1884
RECEIVED.

Mr Edwards

No. 1871.

United States Legation

Tokei, Japan, 6th June 1884.

Mr. Bingham

To the Secretary of State

Subject.

List of Japanese Lighthouses, Lightships Buoys, Beacons etc, also General Report of the Lighthouse Bureau.

No. 1871. United States Legation

Tokei, Japan, June 6th 1884.

Hon. Frederick T. Frelinghuysen

Secretary of State

Washington D.C.

Sir:

Herewith I have the honor to transmit for your information an official list of the Japanese Light-houses, Lightships, Buoys and Beacons, together with an illustrated volume with chart shewing the positions of the Lights. To the honor of this Government, Japan has singularly well lighted coasts, although under existing existing and past treaties Japan is, and has been, denied the right to collect tonnage duties or light-dues.

I

I have the honor to be

Sir,

Your obedient servant

Jno. A. Bingham

Enclosure -

1) Official List of the Japanese Lighthouses, lightships Buoys Beacons -

2 General Report of the Lighthouse Bureau of the Department of Public Works.

DEPARTMENT OF STATE
JUL 1 1884
RECEIVED.

Mr. Griffin says he has received these pouches

Mr Edwards

No. 1872.

United States Legation

Tokei, Japan, 4th June 1884.

Mr. Bingham

To the Secretary of State.

Subject.

Three mail Pouches returned to the Department.

No. 1872.

United States Legation

Tokei, Japan 7th June 1884.

Hon. Frederick T. Frelinghuysen,

Secretary of State

Washington D.C.

Sir:

I beg leave to inform you that I enclose and return to the Department with this mail three Department Pouches.

I have the honor to be,

Sir,

Your obedient servant

Jno A. Bingham

Orders with pleas July 18: 84 enclo.

To the Press July 18: 84 enclo.

DEPARTMENT OF STATE
JUL 17 1884
RECEIVED.

No. 1873.

United States Legation,

Yokei, Japan, 20th June 1884.

Mr. Bingham

To the Secretary of State

Subject.

Medal of the "Red Ribbon" bestowed upon Captain G. E. Hawkins for saving a Japanese crew off the coast of Japan.

No. 1873. United States Legation

Tokei, Japan, 20th June 1884

Hon. Frederick T. Frelinghuysen,

Secretary of State,

Washington D.C.

Sir:

It gives me much pleasure to enclose herewith for your information, a translation copy of a communication from His Excellency, Mr. Inouye, Minister for Foreign Affairs, wherein the Minister informs me of another rescue, by an American Merchantman, of a Japanese crew when in extreme peril at sea.

The American vessel referred to is the barque, "B. F. Watson", and Captain G. E. Hawkins is Master.

I have heretofore communicated

to

to Captain Howkins the thanks of this Govern-
ment, as requested by Mr. Inouye's note of the
8th ultimo. You will observe by the enclosure,
herewith, that His Majesty, the Emperor
has been pleased to confer upon Captain
G. E. Howkins the medal of the "Red
Ribbon," in recognition of the great
service rendered by Captain Howkins;
and that the Japanese Minister to
the United States has been instructed
to deliver to Captain Howkins, through
the proper authorities of our Government,
this token of His Imperial Majesty's
regard.

I have the honor to be,

Sir,

Your obedient-servant,

Jno. A. Bingham

Enclosure Mr. Inouye to Mr. Bingham
June 14th 1884.

Enclosure with Mr. Bingham's No 18/73.

Translation (Copy)

No. 25. Foreign Office, Tokio,
June 17th 1884.

His Excellency,
John A. Bingham,
&c &c &c

Sir:

Referring to my note of the 8th ultimo in which I had the honor to inform Your Excellency that in March last, when a Japanese crew, consisting of Yoshii Kametaro and several others of Iozimamura Nishi Sonogigori, Nagasaki Ken, having been employed by Mr. White, an English pilot, and having put out to sea for the purpose of pilotting, their boat was wrecked

off

off Tomosaki in the said Ken,
and that while they were in
imminent peril on this account,
they were rescued by Mr. G. E. Hawkins,
Captain of an American barque the
"B. F. Watson," and wherein I hasten
to request Your Excellency to convey
my heartfelt thanks to that gentleman,
I now have the pleasure to acquaint
Your Excellency that His Majesty
the Emperor has been pleased
to confer upon the said gentleman
the Medal of the "Red Ribbon," in
recognition of the humane action
rendered by him, and further, that
H. I. M's Minister in the United States
has been instructed to deliver to
him the said Medal through the
proper authorities of Your Government.

I

I avail myself of this occasion to renew to Your Excellency the assurances of my highest-consideration

(Signed) Inouye Kaoru

H.I.J.M's Minister for Foreign Affairs.

DEPARTMENT OF STATE
JUL 17 1884
RECEIVED.

No. 1874.

United States Legation, Japan.
Tokei, June 20th 1884.

Mr. Bingham
To the Secretary of State.

Subject.
Receipt of instructions and a supply of stationery.

No. 1874. United States Legation.

Tokei, Japan. 20th June, 1884.

Hon. Frederick T. Frelinghuysen,

Secretary of State,

Washington, D. C.

Sir:

I have the honor to acknowledge the receipt of instructions numbered respectively, 818, 819, 820, 821 and 822, and also the receipt of a supply of stationery for this Legation for which I beg leave to tender my thanks,

I have the honor to be,

Sir.

Your obedient servant.

Mc A Bingham

25 copies of Korean treaty sent July 18 to Mr Castle

Mr. Edwards

No. 1876.

United States Legation
Yokei, Japan, 20th June 1884.

Mr. Bingham

To the Secretary of State.

Subject.

Mr. Bingham requests to be furnished with copies of the proclamation of the ratification of the Treaty between the United States and Corea, if such proclamation has been made.

No. 1875.

United States Legation
Tokei, Japan, 21st June 1884.

Hon. Frederick T. Frelinghuysen,
Secretary of State
Washington D.C.

Sir:

I have been on several occasions requested by my Colleagues to furnish them a copy of our recent treaty with Corea, to which I have invariably replied that I had not yet received a copy of its public proclamation by our Government, and could not therefore comply with their request.

If proclamation of the exchange of ratifications ~~or~~ has been made, I beg leave most respectfully to request that I may be furnished with

with some of the printed copies thereof and be permitted to give it publicity by furnishing it for the information of such of my Colleagues as may desire it.

I have the honor to be,

Sir,

Your obedient servant.

Wm. A. Bingham

See No 827. Sum'y of
so acted
July 18, 1884
Circular

DEPARTMENT OF STATE
JUL 17 1884
RECEIVED.

Mr. Edwards

No. 1876.

United States Legation, Japan.

Tokei, June 21st 1884.

Mr. Bingham.

To the Secretary of State,

Subject.

Non-receipt of written instructions in relation to the new Conference for treaty revision with Japan.

No. 1876. United States Legation,

Tokei, Japan, Jan'y 21st 1884.

Hon. Frederick T. Frelinghuysen

Secretary of State,

Washington, D. C.

Sir:

Referring to my No. 1853 of date, the 12th ultimo wherein I acknowledged the receipt of your telegraphic instruction, dated the 10th ultimo, wherein I am authorized to participate in the proposed new conference for the revision of Treaties but instructed that I should await instructions by mail before binding or committing our Government; I beg leave to acquaint you that I am not yet in receipt of the instructions by mail referred to in your telegram

of

of the 10th ultimo, nor has the new Conference yet been convened.

I have recently been verbally informed by Mr. Inouye that the German memorandum is not satisfactory to his government and must be qualified, and also that the conference will not be called until he shall first have made reply in writing to the memorandum of Mr. Plunkett, the British Minister, which is substantially that of Earl Granville, changing the form of words merely, but not the substance, as I understand.

I greatly desire your written instructions and shall await the same.

I have the honor to be, Sir,

Your obedient servant.

Jno. A. Bingham

acted. July 18, 84
Recorded July 18. 84
Cr Tel.
Copy

Mr Edwards

No. 1877.

United States Legation, Japan
Tokei, June 21st 1884.

Hon. Bingham
To the Secretary of State.

Subject.

Reduction of fare asked for by the Japanese authorities for the transportation of the Japanese Executive Commissioners and Exhibitors and articles to be exhibited, to and from the New Orleans Exhibition.

No. 1877. United States Legation.

Tokei, Japan. 21st June 1884.

Hon. Frederick T. Frelinghuysen,

Secretary of State.

Washington, D. C.

Sir:

I have the honor to enclose herewith a copy of a despatch of yesterday's date addressed to me by Mr. Inouye, His Imperial Japanese Majesty's Minister for Foreign Affairs, wherein the Minister communicates the desire of the proper authorities here that "the "fare for the transportation of the "Japanese Executive commissioners "and Exhibitors as well as the articles "to be exhibited to and from," "the "World's Industrial and Cotton Centennial

Exhibition

" Exhibition to be held in the city
" of New Orleans in the State of Louisiana
" in December next, may be reduced as
" it was done in the case of the late
" Philadelphia Exhibition."

You will please note that His Excellency asks me to communicate these requests of the Japanese authorities to those in whose charge the matter is, to the end that the reduction of the fare sought for by the Japanese authorities, may be secured to them.

I have the honor to be,
Sir,
Your obedient servant.
M. C. Bingham

Enclosure.
Mr. Inouye to Mr. Bingham
dated June 20th 1884.

Enclosure with Mr. Bingham's No. 1877.

Copy

Translation. No. 28. Foreign Office Tokio

June 20th 1884.

His Excellency,

John A. Bingham.

Envoy Extraordinary and Minister Plenipotentiary of the U. S. A.

Sir:

With reference to a World's Industrial and Cotton Centennial Exhibition to be held at the City of Orleans in the State of Louisiana in December of this year, in which Exhibition the Japanese Government proposes to participate and exhibit, I beg respectively to communicate to Your Excellency the desire of the proper authorities that the fare for the transportation of the Japanese

Executive

Executive Commissioners and exhibitors as well as the articles to be exhibited, to and from the said Exhibition be reduced as it was done in the case of the Philadelphia Exhibition.

I shall feel much obliged if your Excellency will be good enough to communicate the matter to those in whose charge it is, so that the reductions of the said fare may be complied with.

I avail myself of this occasion to renew to Your Excellency the assurance of my highest consideration.

(signed) Inouye Kaoru.

His Imperial Japanese Majesty's Minister for Foreign Affairs.

Letter with thanks July 18. 1884 Curtin

Wm Edwards

No. 1878.

United States Legation.

Tokio, Japan. June 21st 1884.

Mr. Bingham

To the Secretary of State.

Subject.

Japanese Trade Mark Regulations.

(Copied Aug. 1884.)

(Enclosure file for publication)

No. 1878. United States Legation,

Tokei, Japan, June 21st 1884.

Hon. Frederick T. Frelinghuysen,

Secretary of State,

Washington, D. C.

Sir:

The government issued on the 7th instant, notifications of Trade Mark Regulations and By-Laws for their registration, copies of which as published in the Japan Weekly Mail of the 21st instant, I have the honor to enclose for your information.

I have no doubt our citizens will find it to their advantage to avail themselves of this timely regulation in their future commercial transactions with Japan.

I

I have the honor to be,

Sir,

Your obedient servant,

Wm. A. Burghum

Enclosure.

Extract from the Japan Weekly Mail, dated June 21st 1884.

"Trade Mark Regulations.

DEPARTMENT OF STATE
JUL 17 1884
RECEIVED.

Mr. Edwards

No. 1879. Copy to Treasury July 25, 1884 Circular

United States Legation

Tokei, Japan, June 21st 1884.

Mr. Bingham

To the Secretary of State.

Subject.

Transmitting replies to Circular — Instruction of January 28th 1884 in reference to the Coinage, production, consumption, import and export of precious Metals, and to the metallic and paper Circulation of Japan.

No. 1879. United States Legation

Tokei, Japan 2nd June 1884.

Hon. Frederick T. Frelinghuysen,

Secretary of State,

Washington D.C.

Sir:

Referring to my No. 1829 dated March 24th last, and also to your Circular Instruction therein mentioned of date the 28th of January 1884, in relation to the Coinage production, consumption, import, and export of the precious metals, &c, I beg leave to enclose herewith a copy of Mr. Inouye's note of date the 7th instant, in reply to my letter of Enquiry, which I had the honor to address to him on the 23rd of March last, wherein I requested to be furnished with the

the specific information asked for in your Circular Instructions, and

/2 I also have the honor to enclose, herewith, a translation made by Mr. Whitney of Mr. Inouye's enclosures with his note of the 7th instant.

These enclosures furnish replies to the several interrogatories of your Circular Instruction as follows:

1. The amount, denomination, and value of gold coined in Japan in the year 1883.

2. The amount, denomination, and value of silver coined during the year 1883.

3. The amount of gold, coin, and bullion exported and imported within the year.

4. The amount of Silver Coin and Bullion Exported and imported within the year.

5. The amount of gold from Government mines, from July 1st 1881 to June 30th 1882; and from private mines during the year 1880.

6. The amount of Silver from Government mines from July 1st 1881 to June 30th 1882, and from private mines during the year 1880.

7. Amount of gold Coin in the Imperial Treasury, in the Several Banks, and in circulation on the 31st December 1883.

8. The amount of Silver Coin in the Imperial Treasury, in the Banks, and in Circulation on the 31st Dec 1883

9. The Amount of Government and

Bank

bank notes in circulation, 31st of December 1883.

10. The laws and regulations passed by the Imperial Government of Japan during the year 1883, affecting the coinage, issue or legal tender character of the metallic and paper circulation.

For further information on this subject, I beg leave to refer you to the comparative table shewing the value of the export- and import- of specie and bullion to and from the open ports of Japan in the years 1880-1883, both inclusive, on page 211 of the Annual Return of the Foreign Trade of the Empire of Japan for 1883, a copy of which return is herewith transmitted

3

and

and an additional copy of which I had the honor to transmit to you with my No. 1857 dated the 10th ultimo.

I have the honor to be

Sir,

Your obedient Servant,

P.S. Mc A Bingham

I beg to refer to my No 453 dated Octr 11. 1876 for the law making the paper currency legal tender.

Mc A. Bingham

Enclosures:-

(1) Mr. Inouye to Mr. Bingham dated June 7th 1884.

(2) Translation of Enclosures with Mr. Inouye's note.

(3) Annual Return of the Foreign Trade of the Empire of Japan for 1883. —

Separate Cover.

Enclosure No. 1. With Mr. Bingham's No. 1879.

Translation. Copy.

No. 23. Foreign Office, Tokio,

June 7th 1884.

His Excellency

John A. Bingham

Envoy Extraordinary and Minister

Plenipotentiary of the U.S.A.

Sir:

In reply to Your Excellency's note of the 23rd March last, requesting me to furnish you with all the information obtainable in reference to the coinage production of Japan, also the consumption, import and export of precious metals, paper and metallic circulation, and all other information affecting Japan in this regard, I had the honor to inform

inform Your Excellency on the 25th March that Your Excellency's request had been communicated to the proper authorities. I now beg leave to forward Your Excellency herewith the statements in Japanese as received from the proper authorities containing the answers to the several questions propounded on the subject, and also the abstract of the Government Proclamation in relation to the Coinage.

I request accordingly that Your Excellency will have the goodness to transmit the same to Your Government at an early opportunity.

I avail myself of this occasion to renew to Your Excellency the assurances of my highest

Consideration

Considerable

(Signed) Inouye Kaoru

H. I. J. M's for Foreign Affairs.

Enclosure (1) Replies to interrogatories relative to Coinage production

Enclosure No. 2 with Mr. Bingham's No. 1879.

Answers furnished by the Japanese Government to the several interrogatories propounded by the Honorable Secretary of the Treasury in reference to the coinage, production — consumption, import- and export- of the precious metals, paper and metallic circulation of Japan.

Translation.

No. 1. The gold coins of Japan are of five denominations: 20, 10, 5, 2 and 1 yen.

During the year 1883 the only gold coins coined were of the denomination of five yen, and in value amounted to Yen ——— 1,109,935.

No. 2. The silver coins are of six denominations: the Yen, the Exchange Yen (Trade dollar) and the 50, 20, 10 and 5 sen pieces.

The only silver coins issued during 1883

1883 were of the denomination of one yen and amounted in value to Yen 8,727,490.

No. 3. The following was the amount of export and import of gold coin and bullion during 1883.

value

Export: Japanese Coin Yen 937,598.

" old Coin " 14,636

Foreign coin 57,336.

Import - Japanese " —

" old " Yen 558.

Foreign " —

Bullion —

No. 4 The Export and Import of Silver Coin and bullion during the year 1883 was -

value

Export, Japanese Coin Yen 535,414

" old Coin " 181,533

Foreign " 1,391,743

Bullion 33,581 oz.

Import, Japanese Coin Yen 54,371

" old Coin " —

Foreign

Foreign coin Yen 3,255,789

Bullion 1,856,620 Oz.

No. 5. Amount of gold mined from July 1st 1881 to June 30th 1882 from Government mines ------- 5807 Oz.

Amount mined from mines owned by private individuals during 1880 --- 3549 Oz.

No. 6. Amount of silver mined during the year ending June 30th 1882 from Govt. mines. 243,508 Oz.

Amount mined during the year 1880 from mines owned by private " individuals ------- 142,813 Oz.

No. 7. The amount of gold coin held by the Imperial Treasury and by the General Banks, and ~~of~~ in circulation on the 31st December 1883 was as follows:

Treasury - Japanese coin Yen 6,354,652

" Foreign " " 1,686,099

" Total " 8,040,751.

Held

Held by Banks Yen 572,261.

In Circulation " 83,446,443.

No. 8. The amount of silver coin held by the Imperial Treasury, the Banks and in circulation on the 31st December 1883 was as follows:-

Treasury - Japanese Coin Yen 16,148,891

Foreign " " 685,607

Total in Treasury " 16,834,498.

Held by Banks 6,104,469.

In Circulation 28,077,963

No. 9. Government- and Bank notes in circulation on the 31st December 1883 -

Government Notes. Yen 94,999,277.

Bank notes 31,357,563.

No. 10. The laws and regulations passed during 1883 respecting the coinage and metallic and paper circulation are given in the accompanying transcript.

The amount of gold or silver lost, or employed in the arts, is not known.

Imperial Notificatens and Regulations issued during 1883 and in relation to the Metallic and paper currency.

Imperial Notificatem No. 15.

It is hereby notified that the following Coinage Regulations have been fixed upon to go into effect on the 16th of August of the current year and that Notifications No. 24 A. of July 1878 and No. 101 A of October 1879 of the Finance Department will cease to have effect from the above mentioned date.

Note During the present year. Bullion will still be received upon the days mentioned in Art. III of Notification No. 101 above referred to

Sanjo

Sanjo Saneyoshi
Prime Minister
Matsukata Masayoshi
Minister of Finance.

26th May 1883.

Coinage Regulations

Art. I. The Imperial Mint at Osaka will be open to receive gold or silver bullion from Japanese or foreigners from 9 a.m. to 12 M. on every day with the following exceptions;

Sundays,

Public and special holidays

January 1st, 2nd 3rd, and 5th.

September 1st to October 31st,

December 29th to 31st

Art. II. Whenever extraordinary circumstances arise necessitating the temporary stoppage of the working

working of the mint, public notice shall at once be given thereof, and the receiving of bullion " " suspended.

Art. III. Gold or silver bullion for deposit will not be received unless above the following amounts:

Gold bullion, 30 troy ounces (248.4 momme)
Silver " 300 " " (2484. momme)
Impure gold or silver bullion } in value
Old Japanese gold or silver coins } 200 yen *
Gold and silver bullion mixed }

Note The Branch Office may refuse to receive bullion whenever itse work is in excess of its capacity.

Art. IV. Foreign gold and silver coins, the fineness of which is known, will be received at such fineness. If however pre-melting should be considered necessary, notice

(* Note the Silver Yen is equal in value to the Silver Dollar; the paper yen at the present time is quoted at about 5 percent discount. Tr.)

notice will be given to the depositor to that effect, and the coins received in accordance with Art. VI.

Note At the Branch Offices such coins will only be received after premelting

Art. V. Gold and silver bullion of known fineness shall be subjected to a check-assay, and will be received at the fineness so determined.

If pre-melting is considered necessary the depositor will be so informed and the bullion received in accordance with Art. VI

Art. VI. Gold and silver bullion or Japanese or foreign gold or silver coins, the fineness of which is not known, shall only be received [for minting] after premelting and assaying, and then at the fineness

so determined.

Art. VII. Whenever it is necessary to premelt gold or silver bullion or gold or silver coins, the loss arising from premelting shall be borne by the depositor.

Art VIII. All gold or silver coins or bullion deposited shall be weighed in the presence of the depositor or his representative, and the Chief of the Bullion Bureau, if at the Mint, or the Chief of the Branch Office, if at the latter place, shall give in exchange a temporary certificate of deposit; and upon completion of the assay a statement of account accompanied by a report of the assay, shall be sent to the depositor.

Art.

Art. IX. When the depositor sends back the (above mentioned) Statement of account signed by himself in acceptance thereof, a certificate of the value in coin of the bullion so deposited, and the amount to be paid to him in current coin shall then be issued to him in exchange for the temporary certificate.

Note In case the Statement of account is not returned within three days from the day upon which it was sent, the consent of the depositor will be considered to have been given.

Art. X Payment of coin for bullion, when deposited at the Mint, will be made from the Bank of Japan at Osaka or its Branch at Kobe (or

(or agents); or when deposited at the Branch Office from the Bank of Japan at Tokio or its branch at Yokohama (or agents) on the following days from the day of completion of the assay:

If deposited at the Mint and of sufficient fineness to permit of receiving at once ..... 10th day

If deposited at the Branch Office 25th "

If requiring refining —

.... when deposited at Mint { if under 10,000 yen in value 15th day
— when at Branch Office { " 30th "

If deposited at Mint and under 30,000 yen - 20th "

" " at Branch Office " " " 35th "

If deposited at Mint - " " 70,000 " 25th "

" " at " Branch Office " " " " 40th "

" " " Mint and over " " 30th "

" " " Branch Office " " " " 45th "

If

If the day of payment falls upon a holiday, the payment will be made on the following day.

Note If a depositor desires to receive payment before the termination of the period above mentioned, he may receive such payment from the Bank of Japan or its Osaka Branch, subject to a discount of one ten-thousandths for each day remaining of the unexpired period.

Art XI. A charge for coining gold coins shall be made of seven one thousandths and for silver coins of the denomination of one yen, ten one thousandths.

On bullion which it has been found necessary to pre-melt, an additional charge of one one

thousandths

thousandths will be made.

Art. XII When the refining of bullion deposited is considered necessary, such bullion shall be divided into classes and charge taxed as follows:

Impure gold bullion

Alone 900 parts gold in 1000, for every 10 oz troy pure gold 1 gram

" 850 " " " " " " " " " " " 1.127

" 800 " " " " " " " " " " " 1.254

" 750 " " " " " " " " " " " 1.381

Impure Silver bullion

Alone 900 parts Silver in 1000 for every 10 oz troy pure silver 0.263 gram

" 850 " " " " " " " " " " " 0.29 "

" 800 " " " " " " " " " " " 0.317 "

" 750 " " " " " " " " " " " 0.344 "

Gold and Silver bullion

Alone 900 parts gold & Silver in 1000 { for every 10 oz troy pure gold — 1.00 " / for every 10 oz troy pure silver — 0.263 "

" 850 " " " " " " { " " " " — 1.127 / " " " " 0.29

Alone

above 800 parts gold and Silver in 1000 (for every 10 oz troy pure gold — 1.
for every 10 oz troy pure Silver — 0.

" 750 " " " " " " " " " 1.
0.

note If the bullion does not contain in 1000 parts over 750 parts of gold or Silver it will not be received.

Art. XIII, When bullion or Japanese or foreign gold or Silver coin is deposited at the Branch Office for Comage the depositor will be required to pay for transportation and insurance at the rate of 65 yen per 10,000 yen.

note Should the depositor in the above instance desire to have the coin paid him at Osaka (instead of Tokio, the place of deposit.) the amount to be paid by him (for insurance and transportation) will

will be reduced to one half.

Art. XIV When bullion or coin is returned uncoined charges will be made as follows –

Charge for pre-melting

Gold bullion
Gold and Silver bullion
mixed
(gold above 100 parts in 1000)
} under 500 oz troy } 1 yen

When above 500 oz and under 1000 oz – 2 yen

For amounts exceeding 1000 oz. at the same rate per 1000 oz.

Silver bullion
Gold and Silver bullion
(gold less than 100 parts in 1000
} under 1000 oz troy } 1 yen

When the amount is above 1000 oz troy and under 2000 oz troy 2 yen

For amounts exceeding 2000 oz at the same rate per 1000 oz.

For Assay (Separating metal from impurities)

Gold bullion per ingot- 2 yen

Gold and Silver bullion per ingot 1 "

Charge for Check assay same as for above.

Art- XV Coins unfit- for circulation, if above the following amounts in weight-, may be received at the Mint- or Branch Office, and payment for them may be made, after deducting the charges, as given below, on the day following the day on which they were received.

Gold coins in quantities weighing 5 oz Troy (about 41.4 Mommé)

3 1/2 per 1000.

One yen Silver coins 50 oz (414. Mommé)

5 per 1000.

Subsidiary Silver and Copper coins

not-

not limited as to weight, may be exchanged free of charge.

Rusty or cracked coins, or those which ring badly, if otherwise good, will be exchanged piece for piece at the Mint for good coins free of charge.

Art. XVI. The impurities contained in gold or silver, or mixed gold and silver bullion will not be returned to the depositor

Notification No. 24 of the Finance Department.

In accordance with Notification No. 5 of February 1880, ten yen notes have been issued, and and it is hereby notified that specimens will be sent to the governments

governments of the several "Chief Cities" and prefectures.

Note After having been publicly advertised for a period of six months these [Specimen] notes must be returned to this Department.

Matsukata Masayoshi
Finance Minister

March 9th 1883.

Mr. Norton Whitney
Interpreter

sent by registered

The mail Pouch referred to received. Hon. Griffin

DEPARTMENT OF STATE
JUL 17 1884
RECEIVED.

Mr Griffin

Mr Edwards

No. 1880.

United States Legation

Yokei Japan 23rd June 1884.

Mr. Bingham

To the Secretary of State

Subject-

Returning one Department mail Pouch.

No. 1880. United States Legation

Tokei, Japan 23rd June 1884.

Hon. Frederick T. Frelinghuysen

Secretary of State,

Washington D.C.

Sir:

I have the honor to return to the Department enclosed with this Mail one Mail Pouch.

I have the honor to be

Sir,

Your obedient servant,

M. A. Bushnell

Rec'd with Chemulpo July 18. 84 Cipher.

DEPARTMENT OF STATE
JUL 17 1884
RECEIVED.

Wm Edwards

No. 1881.

United States Legation.

Tokei. Japan, June 24th 1884.

Mr. Bingham

To the Secretary of State.

Subject.

The Treaty between Great Britain and Corea.

(This treaty, from a copy supplied by the Minister at Seoule, is published in Consular Report 42.)

No. 1881. United States Legation.

Tokei, Japan. 24th June, 1884.

Hon. Frederick T. Frelinghuysen,

Secretary of State,

Washington. D. C.

Sir:

Herewith I have the honor to transmit for your information an authenticated copy of the Treaty concluded between Great Britain and the King of Corea, and also of the Trade and Tariff Regulations annexed thereto, published as you will please note by Sir Harry S. Parkes, Her Britannic Majesty's Envoy Extraordinary and Minister Plenipotentiary to China and Corea.

It is especially noticeable that the

the three declarations annexed thereto and made part of the Treaty are as follows: I. That the extraterritorial jurisdiction of Great Britain in Corea shall be relinquished only at such time as the British Government may be pleased to relinquish it.

II. That the right of opening commercial establishments by British subjects in Hang-Gang (Séoul) shall only be surrendered in the event that the Chinese Government surrendens the like right, provided that this same right be not granted by the Corean Government to the subjects of any other Power; and

III. That the provisions of said Treaty shall apply to all British Colonies unless any exception shall be notified by Her Britannic Majesty's Government within one year from the date of the exchange of the

ratifications

ratifications of said Treaty.

I have the honor to be,

Sir,

Your obedient servant.

Wm. A Bingham

Enclosure.

Printed copy of the Treaty
between Great Britain and Corea.

TREATY

BETWEEN

GREAT BRITAIN

AND

COREA.

NOTIFICATION.

The undersigned, Her Britannic Majesty's Envoy Extraordinary and Minister Plenipotentiary at the Court of His Majesty the King of Corea, &c., &c., &c., hereby makes known to Her Majesty's subjects that the Ratifications of the Treaty concluded between Great Britain and Corea on the 26th November last, the text of which, together with that of the Regulations of Trade and Tariff annexed thereto are herewith published, have been this day duly exchanged at this Capital, and that the said Treaty accordingly comes into operation on this date.

Dated at Hanyang (Söul) this twenty-eighth day of April, A.D. 1884.

(Signed) HARRY S. PARKES.

TREATY.

HER MAJESTY the QUEEN of the United Kingdom of Great Britain and Ireland, Empress of India, and His Majesty the KING of Corea, being sincerely desirous of establishing permanent relations of Friendship and Commerce between Their Respective Dominions, have resolved to conclude a Treaty for that purpose, and have therefore named as Their Plenipotentiaries, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, Sir Harry Smith Parkes, Knight Grand Cross of the most distinguished order of St. Michael and St. George, Knight Commander of the Most Honourable Order of The Bath, Her Majesty's Envoy Extraordinary and Minister Plenipotentiary to His Majesty the Emperor of China;

His Majesty the King of Corea, Min Yŏng-mok, President of His Majesty's Foreign Office, a Dignitary of the First Rank, Senior Vice-President of the Council of State, Member of His Majesty's Privy Council, and Junior Guardian of the Crown Prince;

Who, after having communicated to each other their respective Full Powers, found in good and due form, have agreed upon and concluded the following Articles:—

ARTICLE I.

1. There shall be perpetual Peace and Friendship between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, Her heirs and successors, and His Majesty the King of Corea, His heirs and successors, and between their respective Dominions and subjects, who shall enjoy full security and protection for their persons and property within the Dominions of the other.

2. In case of differences arising between one of the High Contracting Parties and a third Power, the other High Contracting Party, if requested to do so, shall exert its good offices to bring about an amicable arrangement.

ARTICLE II.

1. The High Contracting Parties may each appoint a Diplomatic Representative to reside permanently or temporarily at the Capital of the other, and may appoint a Consul-General, Consuls, or Vice-Consuls, to reside at any or all of the ports or places of the other which are open to foreign commerce. The Diplomatic Representatives and Consular functionaries of both countries shall freely enjoy the same facilities for communication, personally or in writing, with the Authorities of the country where they respectively reside, together with all other privileges and immunities, as are enjoyed by Diplomatic or Consular functionaries in other countries.

2. The Diplomatic Representative and the Consular functionaries of each Power and the members of their official establishments shall have the right to travel freely in any part of the Dominions of the other, and the Corean Authorities shall furnish Passports to such British officers travelling in Corea, and shall provide such escort for their protection as may be necessary.

3. The Consular officers of both countries shall exercise their functions on receipt of due authorisation from the Sovereign or Government of the country in which they respectively reside, and shall not be permitted to engage in trade.

Article III.

1. Jurisdiction over the persons and property of British subjects in Corea shall be vested exclusively in the duly authorised British Judicial Authorities, who shall hear and determine all cases brought against British subjects by any British or other foreign subject or citizen without the intervention of the Corean Authorities.

2. If the Corean Authorities or a Corean subject make any charge or complaint against a British subject in Corea, the case shall be heard and decided by the British Judicial Authorities.

3. If the British Authorities or a British subject make any charge or complaint against a Corean subject in Corea, the case shall be heard and decided by the Corean Authorities.

4. A British subject who commits any offence in Corea shall be tried and punished by the British Judicial Authorities according to the laws of Great Britain.

5. A Corean subject who commits in Corea any offence against a British subject shall be tried and punished by the Corean Authorities according to the laws of Corea.

6. Any complaint against a British subject involving a penalty or confiscation by reason of any breach either of this Treaty or of any Regulation annexed thereto, or of any Regulation that may hereafter be made in virtue of its provisions, shall be brought before the British Judicial Authorities for decision, and any penalty imposed, and all property confiscated in such cases, shall belong to the Corean Government.

7. British goods, when seized by the Corean Authorities at an open port, shall be put under the seals of the Corean and the British Consular Authorities, and shall be detained by the former until the British Judicial Authorities shall have given their decision. If this decision is in favour of the owner of the goods, they shall be immediately placed at the Consul's disposal. But the owner shall be allowed to receive them at once on depositing their value with the Corean Authorities pending the decision of the British Judicial Authorities.

8. In all cases, whether civil or criminal, tried either in Corean or British Courts in Corea, a properly authorised official of the nationality of the plaintiff or prosecutor shall be allowed to attend the hearing, and shall be treated with

the courtesy due to his position. He shall be allowed, whenever he thinks it necessary, to call, examine, and cross-examine witnesses, and to protest against the proceedings or decision.

9. If a Corean subject who is charged with an offence against the laws of his country takes refuge on premises occupied by a British subject, or on board a British merchant vessel, the British Consular Authorities, on receiving an application from the Corean Authorities, shall take steps to have such person arrested and handed over to the latter for trial. But, without the consent of the proper British Consular Authority, no Corean officer shall enter the premises of any British subject without his consent, or go on board any British ship without the consent of the officer in charge.

10. On the demand of any competent British Consular Authority, the Corean Authorities shall arrest and deliver to the former any British subject charged with a criminal offence, and any deserter from a British ship of war or merchant vessel.

Article IV.

1. The Ports of Chemulpo (Jenchuan), Wönsan (Gensan), and Pusan (Fusan), or, if the latter port should not be approved, then such other port as may be selected in its neighbourhood, together with the city of Hanyang and the town of Yanghwachin, or such other place in that neighbourhood, as may be deemed desirable, shall, from the day on which this Treaty comes into operation, be opened to British commerce.

2. At the above-named places British subjects shall have the right to rent or to purchase land or houses, and to erect dwellings, warehouses, and factories. They shall be allowed the free exercise of their religion. All arrangements for the selection, determination of the limits, and laying out of the sites of the Foreign Settlements, and for the sale of land at the various ports and places in Corea open to foreign trade, shall be made by the Corean Authorities in conjunction with the competent Foreign Authorities.

3. These sites shall be purchased from the owners and prepared for occupation by the Corean Government, and the expense thus incurred shall be a first charge on the proceeds of the sale of the land. The yearly rental agreed upon by the Corean Authorities in conjunction with the Foreign Authorities shall be paid to the former, who shall retain a fixed amount thereof as a fair equivalent for the land tax, and the remainder, together with any balance left from the proceeds of land sales, shall belong to a Municipal fund to be administered by a Council, the constitution of which shall be determined hereafter by the Corean Authorities in conjunction with the competent Foreign Authorities.

4. British subjects may rent or purchase land or houses beyond the limits of the foreign settlements, and within a distance of ten Corean *li* from the same. But all land so occupied shall be subject to such conditions as to the observance of Corean local regulations and payment of land tax as the Corean Authorities may see fit to impose.

5. The Corean Authorities will set apart, free of cost, at each of the places open to trade, a suitable piece of ground as a foreign cemetery, upon which no rent, land tax, or other charges shall be payable, and the management of which shall be left to the Municipal Council above mentioned.

6. British subjects shall be allowed to go where they please without passports within a distance of one hundred Corean *li* from any of the ports and places open to trade, or within such limits as may be agreed upon between the competent authorities of both countries. British subjects are also authorised to travel in Corea for pleasure or for purposes of trade, to transport and sell goods of all kinds, except books and other printed matter disapproved of by the Corean Government, and to purchase native produce in all parts of the country under passports which will be issued by their Consuls and countersigned or sealed by the Corean local authorities. These passports, if demanded, must be produced for examination in the districts passed through. If the passport be not irregular, the bearer will be allowed to proceed, and he shall be at liberty to procure such means of transport as he may require. Any British subject travelling beyond the limits above named without a passport, or committing when in the interior any offence, shall be arrested and handed over to the nearest British Consul for punishment. Travelling without a passport beyond the said limits will render the offender liable to a fine not exceeding one hundred Mexican dollars, with or without imprisonment for a term not exceeding one month.

7. British subjects in Corea shall be amenable to such municipal, police, and other regulations for the maintenance of peace, order, and good government as may be agreed upon by the competent authorities of the two countries.

Article V.

1. At each of the ports or places open to Foreign trade, British subjects shall be at full liberty to import from any Foreign port or from any Corean open port, to sell to or to buy from any Corean subjects or others, and to export to any Foreign or Corean open port, all kinds of merchandise not prohibited by this Treaty, on paying the duties of the Tariff annexed thereto. They may freely transact their business with Corean subjects or others without the intervention of Corean officials or other persons, and they may freely engage in any industrial occupation.

2. The owners or consignees of all goods imported from any Foreign port upon which the duty of the aforesaid Tariff shall have been paid shall be entitled, on re-exporting the same to any foreign port at any time within thirteen Corean months from the date of importation, to receive a drawback certificate for the amount of such import duty, provided that the original packages containing such goods remain intact. These drawback certificates shall either be redeemed by the Corean Customs on demand, or they shall be received in payment of duty at any Corean open port.

3. The duty paid on Corean goods, when carried from one Corean open port to another, shall be refunded at the

port of shipment on production of a Customs certificate shewing that the goods have arrived at the port of destination, or on satisfactory proof being produced of the loss of the goods by shipwreck.

4. All goods imported into Corea by British subjects, and on which the duty of the Tariff annexed to this Treaty shall have been paid, may be conveyed to any Corean open port free of duty, and, when transported into the interior, shall not be subject to any additional tax, excise or transit duty whatsoever in any part of the country. In like manner, full freedom shall be allowed for the transport to the open ports of all Corean commodities intended for exportation, and such commodities shall not, either at the place of production, or when being conveyed from any part of Corea to any of the open ports, be subject to the payment of any tax, excise or transit duty whatsoever.

5. The Corean Government may charter British merchant vessels for the conveyance of goods or passengers to unopened ports in Corea, and Corean subjects shall have the same right, subject to the approval of their own authorities

6. Whenever the Government of Corea shall have reason to apprehend a scarcity of food within the Kingdom, His Majesty the King of Corea may, by Decree, temporarily prohibit the export of grain to foreign countries from any or all of the Corean open ports, and such prohibition shall become binding on British subjects in Corea on the expiration of one month from the date on which it shall have been officially communicated by the Corean Authorities to the British Consul at the port concerned, but shall not remain longer in force than is absolutely necessary.

7. All British ships shall pay tonnage dues at the rate of thirty cents (Mexican) per register ton. One such payment will entitle a vessel to visit any or all of the open ports in Corea during a period of four months without further charge. All tonnage dues shall be appropriated for the purposes of erecting lighthouses and beacons, and placing buoys on the Corean coast, more especially at the approaches to the open ports, and in deepening or otherwise improving the anchorages. No tonnage dues shall be charged on boats employed at the open ports in landing or shipping cargo.

8. In order to carry into effect and secure the observance of the provisions of this Treaty, it is hereby agreed that the Tariff and Trade Regulations hereto annexed shall come into operation simultaneously with this Treaty. The competent authorities of the two countries may, from time to time, revise the said Regulations with a view to the insertion therein, by mutual consent, of such modifications or additions as experience shall prove to be expedient.

Article VI.

Any British subject who smuggles, or attempts to smuggle, goods into any Corean port or place not open to foreign trade shall forfeit twice the value of such goods, and the goods shall be confiscated. The Corean local authorities may seize such goods, and may arrest any British subject concerned in such smuggling or attempt to smuggle. They

shall immediately forward any person so arrested to the nearest British Consul for trial by the proper British judicial authority, and may detain such goods until the case shall have been finally adjudicated.

ARTICLE VII.

1. If a British ship be wrecked or stranded on the coast of Corea, the local authorities shall immediately take such steps to protect the ship and her cargo from plunder, and all the persons belonging to her from ill-treatment, and to render such other assistance as may be required. They shall at once inform the nearest British Consul of the occurrence, and shall furnish the shipwrecked persons, if necessary, with means of conveyance to the nearest open port.

2. All expenses incurred by the Government of Corea for the rescue, clothing, maintenance, and travelling of shipwrecked British subjects, for the recovery of the bodies of the drowned, for the medical treatment of the sick and injured, and for the burial of the dead, shall be repaid by the British Government to that of Corea.

3. The British Government shall not be responsible for the repayment of the expenses incurred in the recovery or preservation of a wrecked vessel, or the property belonging to her. All such expenses shall be a charge upon the property saved, and shall be paid by the parties interested therein upon receiving delivery of the same.

4. No charge shall be made by the Government of Corea for the expenses of the Government officers, local functionaries, or police who shall proceed to the wreck, for the travelling expenses of officers escorting the shipwrecked men, nor for the expenses of official correspondence. Such expenses shall be borne by the Corean Government.

5. Any British merchant ship compelled by stress of weather or by want of fuel or provisions to enter an unopened port in Corea shall be allowed to execute repairs, and to obtain necessary supplies. All such expenses shall be defrayed by the Master of the vessel.

ARTICLE VIII.

1. The ships of war of each country shall be at liberty to visit all the ports of the other. They shall enjoy every facility for procuring supplies of all kinds, or for making repairs, and shall not be subject to trade or harbour regulations, nor be liable to the payment of duties or port charges of any kind.

2. When British ships of war visit unopened ports in Corea, the officers and men may land, but shall not proceed into the interior unless they are provided with passports.

3. Supplies of all kinds for the use of the British Navy may be landed at the open ports of Corea, and stored in the custody of a British officer, without the payment of any duty. But if any such supplies are sold, the purchaser shall pay the proper duty to the Corean Authorities.

4. The Corean Government will afford all the facilities in their power to ships belonging to the British Government which may be engaged in making surveys in Corean waters.

ARTICLE IX.

1. The British Authorities and British subjects in Corea shall be allowed to employ Corean subjects as teachers, interpreters, servants, or in any other lawful capacity, without any restriction on the part of the Corean Authorities; and, in like manner, no restrictions shall be placed upon the employment of British subjects by Corean Authorities and subjects in any lawful capacity.

2. Subjects of either nationality who may proceed to the country of the other to study its language, literature, laws, arts, or industries, or for the purpose of scientific research, shall be afforded every reasonable facility for doing so.

ARTICLE X.

It is hereby stipulated that the Government, public officers, and subjects of Her Britannic Majesty shall, from the day on which this Treaty comes into operation, participate in all privileges, immunities, and advantages, especially in relation to import or export duties on goods and manufactures, which shall then have been granted or may thereafter be granted by His Majesty the King of Corea to the Government, public officers, or subjects of any other power.

ARTICLE XI.

Ten years from the date on which this Treaty shall come into operation, either of the High Contracting Parties may, on giving one year's previous notice to the other, demand a revision of the Treaty or of the Tariff annexed thereto, with a view to the insertion therein, by mutual consent, of such modifications as experience shall prove to be desirable.

ARTICLE XII.

1. This Treaty is drawn up in the English and Chinese languages, both of which versions have the same meaning, but it is hereby agreed that any difference which may arise as to interpretation shall be determined by reference to the English text.

2. For the present all official communications addressed by the British Authorities to those of Corea shall be accompanied by a translation into Chinese.

ARTICLE XIII.

The present Treaty shall be ratified by Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, and by His Majesty the King of Corea, under their hands and seals; the ratifications shall be exchanged at Hanyang (Söul) as soon as possible, or at latest within one year from the date of signature, and the Treaty, which shall be published by both Governments, shall come into operation on the day on which the ratifications are exchanged.

In witness whereof the respective Plenipotentiaries above named have signed the present Treaty, and have thereto affixed their seals.

Done in triplicate at Hanyang, this twenty-sixth day of November, in the year eighteen hundred and eighty-three, corresponding to the twenty-seventh day of the tenth month

of the four hundred and ninety-second year of the Corean era, being the ninth year of the Chinese reign Kuang Hsü.

[L.S.] HARRY S. PARKES.

[L.S.] Signature of MIN YÖNG-MOK,
the Corean Plenipotentiary.

REGULATIONS

UNDER WHICH BRITISH TRADE IS TO BE CONDUCTED IN COREA.

I.—*Entrance and Clearance of Vessels.*

1. Within forty-eight hours (exclusive of Sundays and holidays) after the arrival of a British ship in a Corean port, the Master shall deliver to the Corean Customs authorities the receipt of the British Consul showing that he has deposited the ship's papers at the British Consulate, and he shall then make an entry of his ship by handing in a written paper stating the name of the ship, of the port from which she comes, of her Master, the number, and, if required, the names of her passengers, her tonnage, and the number of her crew, which paper shall be certified by the Master to be a true statement, and shall be signed by him. He shall, at the same time, deposit a written manifest of his cargo, setting forth the marks and numbers of the packages and their contents as they are described in the Bills of Lading, with the names of the persons to whom they are consigned. The Master shall certify that this description is correct, and shall sign his name to the same. When a vessel has been duly entered, the Customs authorities will issue a permit to open hatches, which shall be exhibited to the Customs officer on board. Breaking bulk without having obtained such permission will render the Master liable to a fine not exceeding one hundred Mexican dollars.

2. If any error is discovered in the manifest, it may be corrected within twenty-four hours (exclusive of Sundays and holidays) of its being handed in, without the payment of any fee, but for any alteration or post entry to the manifest made after that time a fee of five Mexican dollars shall be paid.

3. Any Master who shall neglect to enter his vessel at the Corean Custom-house within the time fixed by this Regulation shall pay a penalty not exceeding fifty Mexican dollars for every twenty-four hours that he shall so neglect to enter his ship.

4. Any British vessel which remains in port for less than forty-eight hours (exclusive of Sundays and holidays) and does not open her hatches, also any vessel driven into port by stress of weather, or only in want of supplies, shall not be required to enter or to pay tonnage dues so long as such vessel does not engage in trade.

5. When the master of a vessel wishes to clear, he shall hand in to the Customs authorities an export manifest containing similar particulars to those given in the import manifest. The Customs authorities will then issue a clearance certificate and return the Consul's receipt for the ship's papers. These documents must be handed into the Consulate before the ship's papers are returned to the master.

6. Should any ship leave the port without clearing outwards in the manner above prescribed, the master shall be liable to a penalty not exceeding two hundred Mexican dollars.

7. British steamers may enter and clear on the same day, and they shall not be required to hand in a manifest except for such goods as are to be landed or transhipped at the port of entry.

II.—*Landing and Shipping of Cargo, and Payment of Duties.*

1. The importer of any goods who desires to land them shall make and sign an application to that effect at the Custom-house, stating his own name, the name of the ship in which the goods have been imported, the marks, numbers, and contents of the packages and their values, and declaring that this statement is correct. The Customs authorities may demand the production of the invoice of each consignment of merchandize. If it is not produced, or if its absence is not satisfactorily accounted for, the owner shall be allowed to land his goods on payment of double the Tariff duty, but the surplus duty so levied shall be refunded on the production of the invoice.

2. All goods so entered may be examined by the Customs officers at the places appointed for the purpose. Such examination shall be made without delay or injury to the merchandize, and the packages shall be at once restored by the Customs authorities to their original condition, in so far as may be practicable.

3. Should the Customs authorities consider the value of any goods paying an *ad valorem* duty as declared by the importer or exporter insufficient, they shall call upon him to pay duty on the value determined by an appraisement to be made by the Customs appraiser. But should the importer or exporter be dissatisfied with that appraisement, he shall within twenty-four hours (exclusive of Sundays and holidays) state his reasons for such dissatisfaction to the Commissioner of Customs, and shall appoint an appraiser of his own to make a re-appraisement. He shall then declare the value of the goods as determined by such re-appraisement. The Commissioner of Customs will thereupon, at his option, either assess the duty on the value determined, by this re-appraisement, or will purchase the goods from the importer or exporter at the price thus determined, with the addition of five per cent. In the latter case the purchase money shall be paid to the importer or exporter within five days from the date on which he has declared the value determined by his own appraiser.

4. Upon all goods damaged on the voyage of importation a fair reduction of duty shall be allowed, proportionate to their deterioration. If any disputes arise as to the amount of such reduction, they shall be settled in the manner pointed out in the preceding clause.

5. All goods intended to be exported shall be entered at the Corean Custom-house before they are shipped. The application to ship shall be made in writing, and shall state the name of the vessel by which the goods are to be exported, the marks and number of the packages, and the quantity, description, and value of the contents. The exporter shall certify in writing that the application gives a true account of all the goods contained therein, and shall sign his name thereto.

6. No goods shall be landed or shipped at other places than those fixed by the Corean Customs authorities, or between the hours of sunset and sunrise, or on Sundays or holidays, without the special permission of the Customs authorities, who will be entitled to reasonable fees for the extra duty thus performed.

7. Claims by importers or exporters for duties paid in excess, or by the Customs authorities for duties which have not been fully paid, shall be entertained only when made within thirty days from the date of payment.

8. No entry will be required in the case of provisions for the use of British ships, their crews and passengers, nor for the baggage of the latter which may be landed or shipped at any time after examination by the Customs officers.

9. Vessels needing repairs may land their cargo for that purpose without the payment of duty. All goods so landed shall remain in charge of the Corean Authorities, and all just charges for storage, labour, and supervision shall be paid by the master. But if any portion of such cargo be sold, the duties of the Tariff shall be paid on the portion so disposed of.

10. Any person desiring to tranship cargo shall obtain a permit from the Customs authorities before doing so.

III.—*Protection of the Revenue.*

1. The Customs authorities shall have the right to place Customs officers on board any British merchant vessel in their ports. All such Customs officers shall have access to all parts of the ship in which cargo is stowed. They shall be treated with civility, and such reasonable accommodation shall be allotted to them as the ship affords.

2. The hatches and all other places of entrance into that part of the ship where cargo is stowed may be secured by the Corean Customs officers between the hours of sunset and sunrise, and on Sundays and holidays, by affixing seals locks, or other fastenings, and if any person shall, without due permission, wilfully open any entrance that has been so secured, or break any seal, lock, or other fastening that has been affixed by the Corean Customs officers, not only the

person so offending, but the master of the ship also, shall be liable to a penalty not exceeding one hundred Mexican dollars.

3. Any British subject who ships, or attempts to ship, or discharges, or attempts to discharge, goods which have not been duly entered at the Custom-house in the manner above provided, or packages containing goods different from those described in the import or export permit application, or prohibited goods, shall forfeit twice the value of such goods, and the goods shall be confiscated.

4. Any person signing a false declaration or certificate with the intent to defraud the revenue of Corea shall be liable to a fine not exceeding two hundred Mexican dollars.

5. Any violation of any provision of these Regulations, to which no penalty is specially attached herein, may be punished by a fine not exceeding one hundred Mexican dollars.

Note.—All documents required by these Regulations, and all other communications addressed to the Corean Customs authorities, may be written in the English language.

[L.S.] HARRY S. PARKES.

[L.S.] Signature of MIN YÖNG-MOK,
the Corean Plenipotentiary.

PROTOCOL.

The above-named Plenipotentiaries hereby make and append to this Treaty the following three Declarations:—

I. With reference to Article III of this Treaty, it is hereby declared that the right of extra-territorial jurisdiction over British subjects in Corea granted by this Treaty shall be relinquished when, in the judgment of the British Government, the laws and legal procedure of Corea shall have been so far modified and reformed as to remove the objections which now exist to British subjects being placed under Corean jurisdiction, and Corean Judges shall have attained similar legal qualifications and a similar independent position to those of British Judges.

II. With reference to Article IV of this Treaty, it is hereby declared that if the Chinese Government shall hereafter surrender the right of opening commercial establishments in the city of Hanyang, which was granted last year to Chinese subjects, the same right shall not be claimed for British subjects, provided that it be not granted by the Corean Government to the subjects of any other Power.

III. It is hereby declared that the provisions of this Treaty shall apply to all British Colonies, unless any exception shall be notified by Her Majesty's Government to that of Corea within one year from the date on which the Ratifications of this Treaty shall be exchanged.

And it is hereby further stipulated that this Protocol shall be laid before the High Contracting Parties simultaneously with this Treaty, and that the ratification of this Treaty shall include the confirmation of the above three declarations, for which, therefore, no separate act of ratification will be required.

In faith of which the above-named Plenipotentiaries have this day signed this Protocol, and have thereto affixed their seals.

Done at Hanyang this twenty-sixth day of November, in the year eighteen hundred and eighty-three, corresponding to the twenty-seventh day of the tenth month of the four hundred and ninety-second year of the Corean era, being the ninth year of the Chinese reign Kuang Hsü.

[L.S.] HARRY S. PARKES.

[L.S.] Signature of MIN YÖNG-MOK,
the Corean Plenipotentiary.

IMPORT TARIFF.

[CLASSIFIED ACCORDING TO RATE OF DUTY.]

CLASS I.

Duty-Free Goods.

Agricultural implements.
Books, maps, and charts.
Bullion, being gold and silver refined.
Coins, gold, and silver.
Fire engines.
Models of inventions.
Packing bags, packing matting, tea-lead, and ropes for packing goods.
Plants, trees, and shrubs, of all kinds.
Samples in reasonable quantities.
Scientific instruments, as physical, mathematical, meteorological, and surgical instruments and their appliances.
Travellers' baggage.
Types, new and old.

CLASS II.

Import Goods subject to an ad valorem *duty of 5 per cent.*

Alum.
Anchors and chains.
Bark for tanning.
Bamboo, split or not.
Beans, peas, and pulse, all kinds.
Bones.
Bricks and tiles.
Camphor, crude.
Coal and coke.
Cotton, raw.
Drugs and medicines, all kinds.
Fish, fresh.
Flax, hemp, and jute.
Flints.
Flour and meal, all kinds.
Fruit, fresh, all kinds.
Glue.
Grain and corn, all kinds.
Guano and manures, all kinds.
Hides and skins, raw and undressed.
Horns and hoofs, all kinds not otherwise provided for.
Kerosene and petroleum and other mineral oils.
Lanterns, paper.
Lime.
Matches.
Matting, floor, Chinese and Japanese, coir, etc., common qualities.
Meat, fresh.
Metals, all kinds, in pig, block, ingot, slab, bar, rod, plate, sheet, hoop, strip, band, and flat, T- and angle-iron, old and scrap iron.
Oil cake.
Oil, wood (*T'ung-yu.*)
Paper, common qualities.
Pepper, unground.
Pitch and tar.
Rattans, split or not.

Scales and balances.
Seeds, all kinds.
Soap, common qualities.
Soy, Chinese and Japanese.
Twine and thread, all kinds excepting in silk.
Umbrellas, paper.
Vegetables, fresh, dried, and salted.
Wool, sheeps', raw.
Yarns, all kinds, in cotton, wool, hemp, etc.
All unenumerated articles, raw or unmanufactured.

CLASS III.

Import Goods subject to an ad valorem *duty of* 7½ *per cent.*

Beverages, such as lemonade, ginger beer, soda and mineral waters.
Blankets and rugs.
Buttons, buckles, hooks and eyes.
Candles.
Canvas.
Carpets of jute, hemp, or felt, patent tapestry.
Charcoal.
Chemicals, all kinds.
Cocoons.
Cement, as Portland and other kinds.
Cordage and rope, all kinds and sizes.
Clothing and wearing apparel of all kinds, hats, boots, shoes, etc.
Cotton manufactures, all kinds.
Cotton and woollen mixtures, all kinds.
Cotton and silk mixtures, all kinds.
Dyes, colours, and paints, paint oils, and materials used for mixing paints.
Earthenware.
Fans.
Feathers.
Felt.
Fish, dried and salted.
Floor rugs, all kinds.
Foil, tin, copper, and all other kinds except gold and silver.
Fruits, dried, salted, or preserved.
Gamboge.
Glass, window, plain, and coloured, all qualities.
Grass cloth and all textiles in hemp, jute, etc.
Hair, all kinds except human.
Hides and skins, tanned and dressed.
Isinglass, all kinds.
Lamps, all kinds.
Leather, all ordinary kinds, plain.
Linen, linen and cotton, linen and woollen, linen and silk mixtures, grey, white, or printed.
Matting, superior quality, Japanese "tatamis," &c.
Meat, dried and salted.
Metals, all kinds in pipe and tube, corrugated or galvanised, wire, steel, tinplates, nickel, platina, quicksilver, German silver, tutenague, or white copper, yellow metal, unrefined gold and silver.
Metal manufactures, all kinds, as nails, screws, tools, machinery, railway plant, and hardware.
Mosquito netting not made of silk.
Needles and pins.
Oils, vegetable, all kinds.
Oil- and floor-cloth, all kinds.
Paper, all kinds, not otherwise provided for.
Planks, soft wood.
Porcelain, common quality.
Rosin.
Salt.
Sapan wood.
Sea products, as seaweed, bêche-de-mer, etc.

Silk, raw, reeled, thrown, floss or waste.
Silk manufactures not otherwise provided for.
Spectacles.
Spirits in jars.
Stationery and writing materials of all kinds, blank books, etc.
Stones and slate, cut and dressed.
Sugar (brown and white), all qualities, molasses, and syrups.
Sulphur.
Table stores, all kinds, and preserved provisions.
Tallow.
Tea.
Umbrellas, cotton.
Umbrella frames.
Varnish.
Vermicelli.
Wax, bees' or vegetable.
Wax cloth.
Woods and timber, soft.
Woollen manufactures, all kinds.
Woollen and silk mixtures, all kinds.
All unenumerated articles partly manufactured.

CLASS IV.

Import Goods subject to an ad valorem *duty of* 10 *per cent.*

Beer, porter and cider.
Camphor, refined.
Carmine.
Carpets, superior qualities, as Brussels, Kidderminster, and other kinds not enumerated.
Clocks, and parts thereof.
Clothing made wholly of silk.
Confectionaries and sweetmeats, all kinds.
Explosives used for mining, etc. (imported under special permit).
Foil, gold and silver.
Furniture of all kinds.
Glass, plate, silvered or unsilvered, framed or unframed.
Glassware, all kinds.
Hair, human.
India-rubber, manufactured or not.
Leather, superior kinds, or stamped, figured, or coloured.
Leather manufactures, all kinds.
Lacquered-ware, common.
Materials for seals, etc.
Mosquito netting made of silk.
Musical boxes.
Musical instruments, all kinds.
Paper, coloured, fancy, wall and hanging.
Photographic apparatus.
Planks, hard wood.
Plated-ware, all kinds.
Pictures, prints, photographs, engravings, all kinds, framed or unframed.
Porcelain, superior quality.
Saddlery and harness.
Silk thread, or floss silk in skein.
Silk manufactures, as gauze, crape, Japanese amber lustrings, satins, satin damasks, figured satins, Japanese white silk (*"habutai"*).
Soap, superior qualities.
Sugar candy.
Telescopes and binocular glasses.
Tooth powder.
Trunks and portmanteaux.
Umbrellas, silk.
Vermilion.
Watches and parts thereof in common metal, nickel, or silver.

Wines in wood or bottle, all kinds.
Wood or timber, hard.
All unenumerated articles completely manufactured.

CLASS V.

Import Goods subject to an ad valorem *duty of* 20 *per cent.*

Amber.
Arms, firearms, fowling pieces, etc., imported under special permit.
Artificial flowers.
Birds' nests.
Carpets, velvet.
Carriages.
Cochineal.
Coral, manufactured or not.
Embroideries in gold, silver, or silk.
Enamel-ware.
Fireworks.
Furs, superior, as sable, sea otter, seal, otter, beaver, etc.
Ginseng, red, white, crude and clarified.
Hair ornaments, gold and silver.
Incense sticks.
Ivory, manufactured or not.
Jade-ware.
Jewellery, real or imitation.
Lacquered-ware, superior.
Musk.
Pearls.
Perfumes and scents.
Plate, gold and silver.
Precious stones.
Rhinoceros horns.
Scented woods, all kinds.
Spices, all kinds.
Spirits and liqueurs in wood or bottle, all kinds.
Tobacco, all forms and kinds.
Tortoise shell, manufactured or not.
Velvet, silk.
Watches, and parts thereof, in gold and gilt.
Works of art.

CLASS VI.

Prohibited Goods.

Adulterated drugs or medicines.
Arms, munitions, and implements of war, as ordnance or cannon, shot and shell, firearms of all kinds, cartridges, side-arms, spears, or pikes, saltpetre, gunpowder, guncotton, dynamite, and other explosive substances.
The Corean authorities will grant special permits for the importation of arms, firearms, and ammunition for purposes of sport or self-defence, on satisfactory proof being furnished to them of the *bonâ fide* character of the application.
Counterfeit coins, all kinds.
Opium, except medicinal opium.

Foreign ships, when sold in Corea, will pay a duty of twenty-five cents per ton on sailing vessels, and fifty cents per ton on steamers.

[L.S.] HARRY S. PARKES.
[L.S.] Signature of MIN YÖNG-MOK,
the Corean Plenipotentiary.

IMPORT TARIFF.

[ARRANGED ALPHABETICALLY.]

No.	Article.	*Ad valorem* Rate of Duty. Per cent.
1	Agricultural implements	Free
2	Alum	5
3	Amber	20
4	Anchors and chains	5
5	Arms, ammunition, fire-arms, fowling-pieces, or side-arms, imported under special permit of the Corean Government for sporting purposes or for self-defence	20
6	Artificial flowers	20
7	Bamboo, split or not	5
8	Bark for tanning	5
9	Beans, peas, and pulse, all kinds	5
10	Beer, porter and cider	10
11	Beverages, such as lemonade, ginger beer, soda and mineral waters	7½
12	Birds' nests	20
13	Blankets and rugs	7½
14	Bones	5
15	Books, maps and charts	Free
16	Bricks and tiles	5
17	Bullion, being gold or silver, refined	Free
18	Buttons, buckles, hooks and eyes, &c.	7½
19	Camphor, crude	5
20	,, refined	10
21	Candles	7½
22	Canvas	7½
23	Carmine	10
24	Carpets of jute, hemp, or felt, patent tapestry	7½
25	,, superior quality, as Brussels, Kidderminster, and other kinds not enumerated	10
26	,, velvet	20
27	Carriages	20
28	Cement, as Portland and other kinds	7½
29	Charcoal	7½
30	Chemicals, all kinds	7½
31	Clocks and parts thereof	10
32	Clothing and wearing apparel, all kinds, hats, boots and shoes, &c.	7½
33	,, ,, made wholly of silk	10
34	Coal and coke	5
35	Cochineal	20
36	Cocoons	7½
37	Coins, gold and silver	Free
38	Confectionaries and sweetmeats, all kinds	10
39	Coral, manufactured or not	20
40	Cordage and rope, all kinds and sizes	7½
41	Cotton, raw	5
42	Cotton manufactures, all kinds	7½
43	Cotton and woollen mixtures, all kinds	7½
44	Cotton and silk mixtures, all kinds	7½
45	Cutlery, all kinds	7½
46	Drugs, all kinds	5
47	Dyes, colours, and paints, paint oils, and materials used for mixing paints	7½
48	Earthenware	7½
49	Embroideries in gold, silver, or silk	20
50	Enamel-ware	20
51	Explosives used for mining, &c., and imported under special permit	10
52	Fans, all kinds	7½

No.	Article.	Ad valorem Rate of Duty. Per cent.
53	Feathers, all kinds	7½
54	Felt	7½
55	Fire engines	Free
56	Fireworks	20
57	Fish, fresh	5
58	„ dried and salted	7½
59	Flax, hemp, and jute	5
60	Flints	5
61	Floor rugs, all kinds	7½
62	Flour and meal, all kinds	7½
63	Foil, gold and silver	10
64	„ tin, copper, and all other kinds	7½
65	Fruit, fresh, all kinds	5
66	„ dried, salted, or preserved	7½
67	Furniture of all kinds	10
68	Furs, superior, as sable, sea otter, seal, otter, beaver, &c.	20
69	Gamboge	7½
70	Ginseng, red, white, crude, and clarified	20
71	Glass, window, plain and coloured, all qualities	7½
72	„ plate, silvered or unsilvered, framed or unframed	10
73	Glassware, all kinds	10
74	Glue	5
75	Grain and corn, all kinds	5
76	Grass cloth, and all textiles in hemp, jute, &c.	7½
77	Guano and manures, all kinds	5
78	Hair, all kinds except human	7½
79	„ human	10
80	Hair ornaments, gold and silver	20
81	Hides and skins, raw and undressed	5
82	„ „ tanned and dressed	7½
83	Horns and hoofs, all kinds not otherwise provided for	5
84	Incense sticks	20
85	India-rubber, manufactured or not	10
86	Isinglass, all kinds	7½
87	Ivory, manufactured or not	20
88	Jade-ware	20
89	Jewellery, real or imitation	20
90	Kerosine, or petroleum, and other mineral oils	5
91	Lacquered-ware, common	10
92	„ superior	20
93	Lamps, all kinds	7½
94	Lanterns, paper	5
95	Leather, all ordinary kinds, plain	7½
96	„ superior kinds, and stamped, figured, or coloured	10
97	„ manufactures, all kinds	10
98	Lime	5
99	Linen, linen and cotton, linen and woollen mixtures, linen and silk mixtures, all kinds	7½
100	Matches	5
101	Matting, floor, Chinese, Japanese, coir, &c., common qualities	5
102	„ superior qualities, Japanese "tatamis," &c.	7½
103	Meat, fresh	5
104	„ dried and salted	7½
105	Medicines, all kinds not otherwise provided for	5
106	Metals, all kinds, in pig, block, ingot, slab, bar, rod, plate, sheet, hoop, strip, band and flat, T- and angle-iron, old and scrap iron	5
107	Metals, all kinds, in pipe or tube, corrugated or galvanized, wire, steel, tin-plates, quicksilver, nickel, platina, German silver, yellow metal, tutenague, or white copper, unrefined gold and silver	7½
108	Metal manufactures, all kinds, as nails, screws, tools, machinery, railway plant, and hardware	7½
109	Models of inventions	Free
110	Mosquito netting, not made of silk	7½
111	„ made of silk	10

No.	Article.	*Ad valorem* Rate of Duty. Per cent.
112	Musical boxes	10
113	Musical instruments, all kinds	10
114	Musk	20
115	Needles and pins	7½
116	Oil-cake	5
117	Oils, vegetable, all kinds	7½
118	Oil, wood (*T'ung-yu*)	5
119	Oil- and floor-cloth, all kinds	7½
120	Packing bags, packing matting, tea-lead, and ropes for packing goods	Free
121	Paper, common qualities	5
122	,, all kinds, not otherwise provided for	7½
123	,, coloured, fancy, wall, and hanging	10
124	Pearls	20
125	Pepper, unground	5
126	Perfumes and scents	20
127	Photographic apparatus	10
128	Pictures, prints, photographs, engravings, all kinds, framed or unframed	10
129	Pitch and tar	5
130	Planks, soft	7½
131	,, hard	10
132	Plants, trees and shrubs, all kinds	Free
133	Plate, gold and silver	20
134	Plated-ware, all kinds	10
135	Porcelain, common qualities	7½
136	,, superior qualities	10
137	Precious stones, all kinds, set or unset	20
138	Rattans, split or not	5
139	Rhinoceros horns	20
140	Rosin	7½
141	Saddlery and harness	10
142	Salt	7½
143	Samples in reasonable quantities	Free
144	Sapanwood	7½
145	Scales and balances	5
146	Scented wood, all kinds	20
147	Scientific instruments, as physical, mathematical, meteorological, and surgical, and their appliances	Free
148	Seals, materials for	10
149	Sea products, as seaweed, bêche-de-mer, &c.	7½
150	Seeds, all kinds	5
151	Silk, raw, reeled, thrown, floss or waste	7½
152	Silk manufactures, as gauze, crape, Japanese amber lustrings, satins, satin damasks, figured satins, Japanese white silk ("habutai")	10
153	Silk manufactures not otherwise provided for	7½
154	Silk thread and floss silk in skein	10
155	Soap, common qualities	5
156	,, superior qualities	10
157	Soy, Chinese and Japanese	5
158	Spectacles	7½
159	Spices, all kinds	20
160	Spirits, in jars	7½
161	Spirits and liqueurs, in wood or bottle, all kinds	20
162	Stationery and writing materials, all kinds, blank books, &c.	7½
163	Stones and slate, cut and dressed	7½
164	Sugar, brown and white, all qualities, molasses and syrups	7½
165	Sugar candy	10
166	Sulphur	7½
167	Table stores, all kinds, and preserved provisions	7½
168	Tallow	7½
169	Tea	7½
170	Telescopes and binocular glasses	10
171	Tobacco, all kinds and forms	20
172	Tortoise shell, manufactured or not	20

No.	Article.	*Ad valorem* Rate of Duty. Per cent.
173	Tooth powder	10
174	Travellers' baggage	Free.
175	Trunks and portmanteaux	10
176	Twine and thread, all kinds, excepting in silk	5
177	Types, new and old	Free
178	Umbrellas, paper	5
179	„ cotton	7½
180	„ silk	10
181	Umbrella frames	7½
182	Varnish	7½
183	Vegetables, fresh, dried, and salted	5
184	Velvet, silk	20
185	Vermicelli	7½
186	Vermilion	10
187	Watches, and parts thereof, in common metal, nickel, or silver	10
188	„ in gold or gilt	20
189	Wax, bees' or vegetable	7½
190	„ cloth	7½
191	Wines in wood or bottle, all kinds	10
192	Wood and timber, soft	7½
193	„ „ hard	10
194	Wool, sheeps', raw	5
195	Woollen manufactures, all kinds	7½
196	Woollen and silk mixtures, all kinds	7½
197	Works of art	20
198	Yarns, all kinds, in cotton, wool, hemp, &c.	5
	All unenumerated articles, raw or unmanufactured	5
	„ „ partly manufactured	7½
	„ „ completely manufactured	10

Foreign ships, when sold in Corea, will pay a duty of 25 cents per ton on sailing vessels, and 50 cents per ton on steamers.

[L.S.] HARRY S. PARKES.

[L.S.] Signature of MIN YÖNG-MOK, the Corean Plenipotentiary.

EXPORT TARIFF.

CLASS I.

Duty-Free Export Goods.

Bullion, being gold and silver refined.
Coins, gold and silver all kinds.
Plants, trees and shrubs, all kinds.
Samples, in reasonable quantity.
Travellers' baggage.

CLASS II.

All other native goods or productions not enumerated in Class I, will pay an *ad valorem* duty of five per cent.

The exportation of red ginseng is prohibited.

RULES.

I. In the case of imported articles the *ad valorem* duties of this Tariff will be calculated on the actual cost of the goods at the place of production or fabrication, with the addition of freight, insurance, etc. In the case of export articles the *ad valorem* duties will be calculated on market values in Corea.

II. Duties may be paid in Mexican dollars or Japanese silver *yen*.

III. The above Tariff of import and export duties shall be converted, as soon as possible, and as far as may be deemed desirable, into specific rates by agreement between the competent authorities of the two countries.

[L.S.] HARRY S. PARKES.

[L.S.] Signature of MIN YÖNG-MOK, the Corean Plenipotentiary.

DEPARTMENT OF STATE
AUG 4 1884
RECEIVED

United States Legation

Tokio, Japan, June 30th 1884.

Mr. N. Whitney Interpreter.

To the Secretary of State

Subject.

Salary account for the second quarter 1884.

United States Legation

Tokio, Japan, June 30th 1884.

Hon. Frederick T. Frelinghuysen,

Secretary of State

Washington D.C.

Sir:

I beg leave to enclose herewith the statement of my account, as Interpreter to this Legation, for the second quarter of the current year.

I have this day drawn on Messrs. Morton Rose & Co, London, my bill calling for the sum of £78.8.7 - Sterling, and sold the same to the Hongkong and Shanghai Banking Corporation, Yokohama, for which I have received at the current rate of exchange, as shewn by certificate herewith, the equivalent of $625.00 U.S.

U.S. Gold and no more

I have the honor to be,

Sir,

Your obedient servant

Willis Norton Whitney

Enclosures-

(1) Statement of Salary account

(2) Voucher for draft - Sold.

June 30/54